

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

Report of the Australian Parliamentary Delegation

to

**Canada, the United States, Italy,
Austria, the United Kingdom and the Netherlands**

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Acronyms and abbreviations list

ACC	Australian Crime Commission
ACIIS	Automated Criminal Intelligence Information System (Canada)
ACPO	Association of Chief Police Officers (UK)
AFP	Australian Federal Police
AFU	Asset Forfeiture Unit (South Africa)
AGD	Attorney General's Department (Australia)
APACS	UK Payment Association
BTP	British Transport Police
CALEA	<i>Communications Assistance for Law Enforcement Act 1994 (US)</i>
CIROC	Canadian Integrated Response to Organized Crime
CISC	Criminal Intelligence Service Canada
CNP	card-not-present
CPCD	Criminal Police Central Directorate (Italy)
DCPCU	Dedicated Cheque and Plastic Crime Unit (UK)
DCSA	The Central Directorate for Antidrug Services (Italy)
DSO	Directorate of Special Operations (South Africa)
DIA	Direzione Investigativa Antimafia (Italy)
ELOs	Europol Liaison Officers
ESP	Employer Supported Policing (UK)
FBI	The Federal Bureau of Investigations (US)
FCO	Foreign & Commonwealth Office (UK)
FISS	Fraud Intelligence Sharing System (UK)
FIU	Financial Intelligence Unit (Netherlands)

GdF	The Guardia di Finanza (Italy)
GDP	Gross Domestic Product
HMRC	Her Majesty's Revenue & Customs (UK)
IFC	Intelligence Fusion Centres (UK)
KLPD	Korps Landelijke Politiediensten/Dutch Police (Netherlands)
MDMA	Methylenedioxymethamphetamine
MSC	Metropolitan Special Constabulary (UK)
NPA	The National Prosecuting Authority (South Africa)
NPS	National Prosecuting Services (South Africa)
OMCGs	Outlaw Motorcycle Gangs
PCSOs	Police Community Support Officers (UK)
PIPJIU	Payments Industry and Police Joint Intelligence Unit (UK)
PPSC	Public Prosecution Service of Canada
RCMP	Royal Canadian Mounted Police
RICO	<i>Racketeer Influence and Corrupt Organizations Act 1970 (US)</i>
SCD	Specialist Crime Directorate (UK)
SCPO	Serious Crime Prevention Orders (UK)
S.I.R.E.N.E. (Europe)	Supplementary Information Request at the National Entry (Europe)
SIS	Schengen Information System (Europe)
SLOs	SOCA Liaison Officers (UK)
SOCA	Serious Organised Crime Agency (UK)
the committee	Parliamentary Joint Committee on the Australian Crime Commission
the Ombudsman	Commonwealth Ombudsman (Australia)
UK	United Kingdom

US	United States of America
UNICRI	United Nations Interregional Crime and Justice Institute
UNODC	United Nations Office on Drugs and Crime
VAT	Value Added Tax (UK)

Currency abbreviations

AU\$	Australian Dollars
CA\$	Canadian Dollars
£	United Kingdom Pounds
€	Euros
US\$	United States Dollars

Foreword

Drugs, illegal firearms, human trafficking – the top three criminal activities in the world. How do we contain them? How do we stop people endangering their lives by ingesting chemicals with their ice water in nightclubs? How do we stop young men using weapons, the effects of which they barely understand? How do we stop people being forced to labour in fields or brothels after being sold into slavery?

Our delegation was told time and time again in each jurisdiction we visited, that crime is functional and dynamic in perspective. It is a business, conducted on a business model, with national and international networks and hierarchies and hubs.

This means that each level of society can and has been infiltrated by organised crime. It is a cancer - active everyday and efficient enough to adapt quickly to changing circumstances.

In response, governments need to confront taboos - particularly in the area of civil liberties. Each jurisdiction that we visited expressed exasperation at the abuse of well-intentioned rights laws by wealthy criminals.

In this report, the Committee proffers solutions that may appear to some as harsh and uncompromising. Nonetheless, we firmly believe that they are critical to ensure that our law enforcement agencies are equipped to handle the ever-changing challenges posed by organised crime.

Australia responds to crime and criminal assets better than most. We should be very proud of our law enforcement agencies and officers.

We must maintain our vigilance and give those agencies the tools and support they require to hammer remorselessly those who would undermine the peace and order of our society.

Senator Stephen Hutchins
Delegation Leader

CHAPTER 1

Background to the delegation

1.1 During the 41st Parliament, the Parliamentary Joint Committee on the Australian Crime Commission (the committee) inquired into the future impact of serious and organised crime on Australian society. That inquiry found that Australia faces an increased threat from serious and organised crime and from transnational crime, and that while a number of agencies and legislative arrangements are in place, these in themselves, may not be wholly effective in addressing the threat.

1.2 In May 2007, the then Minister for Justice and Customs, Senator The Hon. David Johnston, wrote to the committee indicating that he sought to ensure that:

Australia's legislative framework for disrupting and dismantling serious and organised crime groups continues to be as up to date and effective as possible.¹

1.3 The Minister proposed that the committee consider legislation adopted in Canada, the United Kingdom and the Netherlands to:

examine the relative merits of the approaches adopted in these different jurisdictions, [as] any insights that can be gained as to the practical workings of the laws in these countries, and the extent to which these overseas models and this overseas experience is likely to be applicable to serious and organised crime as it manifests itself in Australia.²

1.4 The committee considered that the Minister's request would be a valuable exercise but due to the election in November 2007 there was no opportunity to undertake this study. Consequently, the committee chose to make a recommendation in its 2007 report, which kept this issue on the committee's program of work in the next Parliament:

Recommendation 6

The committee suggests that the Parliamentary Joint Committee on the Australian Crime Commission in the next term of the Federal Parliament conduct an inquiry into all aspects of international legislative and administrative strategies to disrupt and dismantle serious and organised crime.³

1.5 In the 42nd Parliament, the committee agreed to undertake an inquiry into legislative arrangements to outlaw serious and organised crime groups. The full terms

1 Senator, The Hon David Johnston, Minister for Justice and Customs, Correspondence 07/5188.

2 Senator, The Hon David Johnston, Minister for Justice and Customs, Correspondence 07/5188.

3 Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into the future impact of serious and organised crime on Australian Society*, September 2007.

of reference of this inquiry are provided at Appendix A. The committee developed a specific term of reference to facilitate the Minister's request to examine current international approaches to disrupt and dismantle serious and organised crime groups:

The committee will examine international legislative arrangements developed to outlaw serious and organised crime groups and association to those groups and the effectiveness of these arrangements.

1.6 In October 2008, the committee wrote to the then Minister of Home Affairs, the Hon. Bob Debus, seeking his support for the committee and to hold meetings with the Royal Canadian Mounted Police in Canada, Europol in the Netherlands and the Serious and Organised Crime Agency in the United Kingdom. The Minister supported the committee's proposal and the matter was then referred to the Prime Minister for his support and approval.

1.7 In February 2009, the committee received Prime Ministerial approval to hold meetings with the Royal Canadian Mounted Police, Europol and the Serious and Organised Crime Agency. The committee also received a further request from the Minister of Foreign Affairs, the Hon Stephen Smith, to engage with the United Nations Office on Drugs and Crime in Vienna, Austria, and the United Nations Interregional Crime and Justice Research Institution in Rome, Italy. The committee considered this additional request from the Minister of Foreign Affairs and agreed that it would undertake the additional travel. A full program of meetings is listed at Appendix B.

The objectives of the delegation

1.8 Parliamentary delegations in support of committee inquiries serve several purposes, including the following:

- To contribute to the Parliament's understanding of the issues involved in the inquiry
- To enhance awareness in Australia and in the countries visited of the inquiry
- To provide opportunities for Australia's official representatives in subject countries to meet with and lobby high level officials, politicians and parliamentarians in those countries
- To facilitate high level contacts between Australian parliamentarians and overseas officials, politicians, parliamentarians, business leaders and others for the purposes of the inquiry.

1.9 The primary aim of this delegation was to facilitate a better understanding of the approaches developed to disrupt and dismantle serious and transnational organised crime within each international jurisdiction. Consequently, the delegation program was developed in consultation with, and on advice from, the Australian Federal Police, the Australian Crime Commission, and the Attorney-General's Department, to capture the following information in each country visited:

-
- What is the nature and extent of organised crime domestically?
 - What is the nature and extent of transnational crime within the jurisdiction?
 - What are the key domestic agencies targeting organised crime and how do they operate?
 - What are the partnership arrangements with other sectors domestically, and with other overseas jurisdictions and international organisations, to target organised crime?
 - What are the key legislative instruments or programs which target domestic organised crime (including proceeds of crime arrangements, police powers, criminal law) and how successful are they?
 - What are the key legislative instruments or programs which target transnational crime and how successful are they?
 - Does any jurisdiction use 'control orders', or something similar, as a means of limiting crime group membership? What are the benefits of this approach and what are the difficulties in using such an approach?

1.10 This delegation report aims to report on the range of information gained during the delegation, and identify key issues and trends in approaches to combating organised crime. It does not make recommendations in relation to these issues. The report for the committee's inquiry into legislative arrangements to outlaw serious and organised crime groups will be a broader and more thorough account of all evidence obtained during the course of the inquiry. The inquiry report will develop further the key issues identified in this delegation report. This delegation report should be viewed as a supplement to the report of the committee's inquiry into legislative arrangements to outlaw serious and organised crime groups, which will be published later in 2009.

Acknowledgements

1.11 Many people greatly assisted the delegation in a variety of ways to ensure its success. The Delegation expresses its appreciation to all those involved. In particular, the Delegation would like to record its thanks to the following organisations and individuals.

The Australian Federal Police

1.12 The Australian Federal Police (AFP) greatly assisted with both the development of the delegation program and in assisting delegation members in various international locations.

1.13 In Canberra, delegation members would like to acknowledge the great efforts and assistance provided by members of the Border and International Branch, Assistant Commissioner Tim Morris, Commander Paul Osbourne, and Ms Jody Chapman and her team. In particular, the delegation wishes to thank Ms Chapman who worked tirelessly to coordinate the delegation program.

1.14 The delegation is also extremely appreciative of the assistance, and good humour, provided by AFP Senior Liaison Officers in the countries and regions which the delegation visited. In particular:

- Federal Agent Gerry Morris in Ottawa and Washington
- Federal Agent Mark Dokmanovic in Rome
- Federal Agent Peter Bodel and Federal Agent Ray Imbriano in The Hague
- Federal Agent Chris Lines in London.

1.15 The Delegation was extremely impressed with the professionalism of these officers and with the high regard in which the AFP is held internationally.

Department of Foreign Affairs and Trade

1.16 The Delegation would like to acknowledge the assistance provided by Australia's embassies in the countries to which the Delegation travelled. The Delegation notes that Australia's interests are well served internationally by the officers of the Department of Foreign Affairs and Trade.



Delegation Members with H.E. Tim Fisher, Australia's Ambassador to the Holy See, Italy

1.17 In particular the Delegation wishes to thank:

- H.E Amanda Vanstone, Ambassador to Italy for her generosity during the Delegation's time in Rome and for making available embassy staff to assist the Delegation. The Delegation wishes to thank Ms. Lee Holloway, Third Secretary, DFAT.
- H.E Peter Shannon, Ambassador to Austria for his generosity during the Delegation's time in Vienna, for hosting a meeting with senior Europol

officers and for making available embassy staff to assist the Delegation. The Delegation wishes to thank Mr Simon Mamouney, Third Secretary, DFAT.

- H.E. Lydia Morton, Ambassador to the Netherlands for her generosity during the Delegation's time in the Hague and for hosting a meeting with senior Dutch law enforcement officers.



Delegation Members with H.E. Lydia Morton, Australia's Ambassador to the Netherlands, and Federal Agent Peter Bodel, AFP

- H.E Tim Fisher, Ambassador to the Holy See, for his generosity of his time and his knowledge.
- H.E Justine Brown, High Commissioner to Canada for hosting a meeting with senior Canadian law enforcement officers.
- H.E. John Dauth, High Commissioner to the United Kingdom for meeting with the Delegation.
- Mr David Stuart, Deputy Chief of Mission United States of America for meeting with the Delegation.

The Australian Crime Commission and the Attorney-Generals Department

1.18 The Delegation would like to record its thanks to those officers of the Australian Crime Commission (ACC) and the Attorney-General's Department (AGD) who assisted with preliminary briefings. In particular, the Delegation acknowledges the assistance of Mr Craig Harris and Mr Hamish Hansford from AGD, who provided advice based upon their own examination of international law enforcement agencies.

Parliamentary Officers

1.19 The Delegation acknowledges the assistance provide by officers of the Parliamentary Relations Office.

1.20 The Delegation would also like to acknowledge the work of the secretariat staff of the Parliamentary Joint Committee on the Australian Crime Commission, who greatly supported the organisation and preparation of the delegation program and the production of the delegation report.

ANZAC Day Commemorations

1.21 The Delegation was fortunate enough to be in London on 25 April 2009 and was able to commemorate ANZAC Day.



Delegation Members laying a wreath at the ANZAC Day Dawn Service, Australian War Memorial, London, United Kingdom

1.22 At least 2,000 people attended the Dawn Service. The large crowd that attended the service is indicative of the strong support that Australians and New Zealanders, around the world, show in the observance of this day of Remembrance.

1.23 In particular, the Delegation was delighted that boys from Canberra Boys Grammar School Chamber Choir, were in London to sing at the ANZAC Day ceremonies.

CHAPTER 2

North American approaches to organised crime

Canada

2.1 The Delegation travelled to Ottawa where it held discussions over two days with senior executive officers from the Royal Canadian Mounted Police, the Criminal Intelligence Service Canada, the Department of Justice Canada, and the Public Prosecution Service of Canada. Discussions covered the range of law enforcement programs and legislative approaches developed in Canada to target serious and organised crime. Details of these meetings and the officers with whom the Delegation met are listed at Appendix C.

2.2 The following section provides a brief description of the agencies and departments with which the Delegation met, the nature of organised crime in Canada, Canadian legislation targeting organised crime, and the key issues and findings from the Delegation's discussions in Canada.

Canadian agencies with which the Delegation met

Royal Canadian Mounted Police¹

2.3 The Royal Canadian Mounted Police (RCMP) is the national policing body in Canada. It is headed by Commissioner William Elliott, and under the *Royal Canadian Mounted Police Act* is responsible for enforcing laws made by the Canadian Parliament. Commissioner Elliott is the first appointed Commissioner of the RCMP who has not previously served as a law enforcement officer.

2.4 Under Canadian law the enforcement of the *Criminal Code 1985* is the responsibility of provincial governments. The RCMP provides policing services to all of the provinces except Ontario and Quebec, plus the Yukon, Northwest Territories and Nunavut, under policing agreements and, under separate agreements, provides policing services to 197 municipalities.

2.5 In 1996, the RCMP began moving towards a more regional management system under the direction of deputy commissioners. Four regions were developed: Pacific, Northwestern, Central, and Atlantic. This change ensures greater regional and local involvement in decision-making and allows for the better targeting of the RCMP resources.

2.6 The total establishment of the RCMP force as of 1 April, 2009 was 27,193.

1 Royal Canadian Mounted Police Force: <http://www.rcmp-grc.gc.ca/about-ausujet/organ-eng.htm> (accessed 29 May 2009).



Delegation Members with senior officers of the Royal Canadian Mounted Police, Commissioner Elliott, Senior Deputy Commissioner Sweeney, Deputy Commissioner Souccar, and Deputy Commissioner Killam

Criminal Intelligence Service Canada²

2.7 The Criminal Intelligence Service Canada (CISC) is a strategically-focused organisation that facilitates the production and exchange of criminal information and intelligence within the Canadian law enforcement community.

2.8 Canada has nearly 380 law enforcement agencies and since its inception in 1970, CISC's fundamental purpose is to facilitate the timely production and exchange of criminal intelligence within the Canadian law enforcement community through the delivery of intelligence products and services. CISC has developed an intelligence-led approach to tackling organised crime in Canada.

2.9 CISC Central Bureau is located in Ottawa and provides leadership, strategic direction and administrative support to the national CISC program. CISC has ten provincial bureaus which operate independently while maintaining national service delivery standards. The provincial bureaus focus on criminal intelligence activities within their respective provinces, and provide leadership and guidance in the collection, analysis and production of strategic intelligence products and services at the provincial level. The intelligence collected and analysed through the provincial bureaus is used in the creation of the national intelligence products and services delivered by Central Bureau.

2 Criminal Intelligence Service Canada, http://www.cisc.gc.ca/index_e.html, (accessed 28 May 2009).



Delegation Members with Federal Agent Gerry Morris, and senior officers of Criminal Intelligence Service Canada, and the Royal Canadian Mounted Police

Department of Justice³

2.10 The Department of Justice works to ensure that Canada's justice system is as fair, accessible, and efficient as possible. The Department assists the federal government to develop policy and to draft and reform laws. At the same time, it acts as the government's legal adviser, providing legal counsel and support, prosecuting cases under federal law, and representing the Government of Canada in court.

2.11 The Department's responsibilities reflect the double role of the Minister of Justice, who is also by law the Attorney-General of Canada. In general terms, the Minister is concerned with the administration of justice and policy in areas including criminal law, family law, human rights law, and Aboriginal justice. The Attorney-General is the chief law officer of the Crown and is responsible for conducting all litigation for the federal government.

The Public Prosecution Service of Canada⁴

2.12 The Public Prosecution Service of Canada (PPSC) is a federal government organization responsible for prosecuting criminal offences under federal law and contributing to strengthening the Canadian criminal justice system.

2.13 The PPSC is responsible for prosecuting offences under more than 50 federal statutes and provides prosecution-related legal advice to law enforcement agencies. The PPSC is not an investigative agency. It prosecutes when a charge has been laid pursuant to an investigation by the Royal Canadian Mounted Police (RCMP), or some

3 Department of Justice, Canada, <http://www.justice.gc.ca/eng/>, (accessed 17 June 2009).

4 Public Prosecution Service of Canada, <http://www.ppsc-sppc.gc.ca/eng/bas/abt-suj.html> (accessed 6 June 2009).

other police force or investigative agency, of a violation of federal law. The PPSC provides advice and assistance to investigators at the investigative stage and works closely with them. Cases prosecuted by the PPSC include those involving drugs, organized crime, terrorism, tax law, money laundering and proceeds of crime, crimes against humanity and war crimes, Criminal Code offences in the territories, and a large number of federal regulatory offences.

2.14 The PPSC is an independent organization which reports to Parliament through the Attorney-General. The PPSC employs approximately 900 full time employees, including 500 prosecutors, and retains more than 810 private-sector lawyers as agents across Canada.

The nature of organised crime in Canada

2.15 The Delegation was provided with a transcript of evidence to the Standing Committee on Justice and Human Rights, in which Assistant Commissioner Mike Cabana, Organized Crime Committee, Federal and International Operations, Royal Canadian Mounted Police, gave an overview of organised crime in Canada:

Organized crime has significantly changed over the last five years in Canada. While the drug trade remains a focal point of their activities, they have continued to become more sophisticated and diversified in their criminal activities.

Most are involved in more than one type of criminal activity which can range from drug crimes or financial crimes, such as identity theft, mass-market fraud and money laundering, to crimes such as human smuggling, human trafficking, and counterfeiting consumer products and medications.

While there are many factors at play in the acceleration of organized crime activity in Canada, the end result is that today Canada has been identified as a source country for synthetic drugs and a transit country for cocaine en route from North America to Asia. More worrying, and presenting an immediate threat to public safety, organized crime groups have escalated their use of violence in fighting for territory and shares in what have become very lucrative illicit markets. These groups have also come to rely on the corruption of public officials and using violence towards their rivals, potential witnesses, law enforcement, and the judiciary.

Many organizations have become more sophisticated in that they compartmentalize their operations and expand over a number of countries. They are relying on modern technology to communicate and to further insulate themselves from the reach of the law.⁵

2.16 The nature of serious and organised crime is not unique to Canada – organised crime has developed in a similar manner in Australia.

5 Standing Committee on Justice and Human Rights , Committee Hearing 25 March 2009, by Assistant Commissioner Mike Cabana, Organized Crime Committee, Federal and International Operations, Royal Canadian Mounted Police.

Key Canadian legislation targeting organised crime

Criminal laws

In 1997, together with New Zealand, Canada became the first common law jurisdiction in the region to introduce specific offences against criminal organisations. These offences were introduced in response to the activities of outlaw motorcycle gangs... Throughout the 1990s the province of Québec saw particularly violent clashes, including bombings and killings, between rival biker gangs, frequently involving the Hell's Angels and the Rock Machine gangs that were fighting for control of Montréal's illicit drug trade.⁶

2.17 The *Act to amend the Criminal Code (criminal organizations) and to amend other Act in consequence (Bill C-95)*, which was enacted in 1997, amended the Criminal Code by adding a new offence for participating in and contributing to the activities of criminal organisations,⁷ proceeds of crime forfeiture provisions based on the civil standard of proof,⁸ orders to 'keep the peace',⁹ consecutive sentencing provisions¹⁰ and police surveillance powers.¹¹ The provisions were amended in 2002 to extend the application of the offences beyond Outlaw Motorcycle Gangs (OMCGs, referred to as 'bikers' in Canada) to other organised criminal groups.

2.18 The Criminal Code defines 'criminal organisation' as a group comprised of three or more persons that has as one of its main purposes or activities the commission of one or more serious offences that, if committed, would likely result in material benefit to the group or its members.

2.19 There are three offences under the Canadian Criminal Code of:

- (a) Participation in the activities of a criminal organisation
- (b) Commission of a criminal offence for a criminal organisation, and
- (c) Instructing the commission of an offence for a criminal organisation.

2.20 Each of the offences carries a different maximum penalty of five years, 14 years and life imprisonment respectively. The offences act as both distinct crimes and as sentence enhancers.

2.21 The offence of participation in or contribution to the activities of a criminal organisation is designed to capture people whose contribution to a group indirectly

6 Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into legislative arrangements to outlaw serious and organised crime groups*, Submission 1, p. 18.

7 *Criminal Code (Canada)*, section 467.1.

8 *Criminal Code (Canada)*, subsection 490.1(2).

9 *Criminal Code (Canada)*, section 810.01.

10 *Criminal Code (Canada)*, section 718.2.

11 *Criminal Code (Canada)*, sections 183 and 186.

assists the commission of crimes.¹² Section 467.11(1)(3) sets out indicia to assist the court in establishing a person's contribution to a group, which include the use of a name, word or symbol associated with the group, the fact of association and the receipt of a benefit from the group. These indicia are specifically formulated to target OMCGs. Therefore, it is not necessary for the prosecution to prove that an accused took part in a criminal offence in order for a person to be found guilty of the offence.

2.22 Similarly, the offence of instructing the commission of an offence, which is intended to capture the leaders of organised crime groups, does not require evidence that an offence has been committed.¹³

2.23 However, the offence in section 467.12(1) – commission of an offence for an organisation – requires that the elements of an initial indictable offence be proven.¹⁴ If such an offence is proven, each of the three offences may operate as sentence enhancers, depending on the individual's level of involvement, as the legislation requires that the sentences for the organised crime offences be served consecutively with any other substantive crime.¹⁵

2.24 The legislation also alters the ordinary evidentiary burdens in favour of the prosecution, recognising the difficulties that prosecutors often have in obtaining evidence from an accused person's associates. For example, the prosecution does not need to prove that the organisation facilitated or committed an indictable offence or that the accused knew the identity of any of the persons who constituted the organisation.

2.25 Membership of an organisation itself is not an offence under Canadian law.

Proposed amendments

2.26 On 26 February 2009, the Minister for Justice and Attorney-General, the Hon Rob Nicholson, introduced *An Act to amend the Criminal Code (organised crime and protection of justice system participants)*. The Bill proposes the following amendments to the Criminal Code:

- Murders connected to organised crime activity will automatically be first-degree. First degree murder is subject to a mandatory life sentence with a 25 year non-parole period.
- The creation of a new offence to target drive-by shootings. The Bill makes it an offence to intentionally discharge a firearm while being reckless as to whether it will endanger the life or safety of a third party.

12 Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into legislative arrangements to outlaw serious and organised crime groups*, Submission 1, p. 29.

13 Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into legislative arrangements to outlaw serious and organised crime groups*, Submission 1, p. 33.

14 Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into legislative arrangements to outlaw serious and organised crime groups*, Submission 1, p. 31.

15 *Criminal Code (Canada)*, s467.14.

The offence carries a mandatory penalty of four years imprisonment, with a maximum of 14 years. The minimum sentence is increased to five years for a first offence and seven years for a subsequent offence if the offence is committed for a criminal organisation.

- The creation of two new offences of aggravated assault against a peace or public officer that causes bodily harm, and aggravated assault with a weapon on a peace or public officer (any public official employed to maintain public peace or for the service or execution of civil process).
- Clarifying that when imposing sentences for certain offences against justice system participants (including police), courts must give primary consideration to the objectives of denunciation and deterrence.
- Lengthening 'gang peace bonds' – which are preventative court orders requiring individual gang members to agree to specific conditions governing their behaviour – from a maximum of 12 months to 24 months, for defendants with previous convictions for certain organised crime offences. The amendments would also make it clear that courts may impose any bond condition they deem necessary to protect the public.

Proceeds of crime laws

2.27 Part XII.2 of the Criminal Code provides for the seizure, restraint and confiscation of assets proven on the balance of probabilities to be the proceeds of crime for which the person was convicted. A person must have been convicted of an indictable offence under Canadian federal legislation prior to the Crown applying for confiscation of the proceeds of crime.

2.28 If the Crown is unable to prove a link between the assets and the crime for which the person was convicted, a court may still order that assets be forfeited if the Crown proves beyond reasonable doubt that the assets are the proceeds of crime.

2.29 The onus is lower for persons convicted of organised crime offences and drug offences, with a court being able to make a confiscation order in regard to any property identified by the Attorney-General if satisfied on the balance of probabilities that the offender has engaged in a pattern of criminal activity for material benefit in the decade preceding the conviction, or that the income cannot be reasonably accounted for.

Key issues and findings

Outlaw Motorcycle Gangs

2.30 Canada has historically had a significant problem with OMCGs. The largest club is the Hells Angels, who according to 2009 estimates by the Criminal Intelligence

Service Canada, are reported to have 460 full-fledged members and 34 chapters.¹⁶ The Bandidos and Outlaws also have a significant Canadian presence.

2.31 During the late 1990s a turf war between the Hells Angels and Rock Machine is reported to have claimed more than 150 lives, including that of 11-year-old Daniel Desrochers, who died when a car bomb exploded outside a biker clubhouse. This incident was the catalyst for the 1997 amendments to the Criminal Code, which increased the penalties for convicted offenders who were shown to be members of established criminal organisations.

2.32 A CBN News article outlined the major biker organizations that operate in Canada:

Hells Angels: Criminal Intelligence Service Canada describes the Hells Angels as the largest "outlaw motorcycle gang" in the country, with active chapters concentrated mostly in Quebec, Ontario and British Columbia.

The gang moved into Ontario in 2000. Before that, its only presence in the province was with a chapter of the Nomads, the club's elite branch. The Nomads doesn't tie itself to geographical locations and doesn't have formal clubhouses, like other chapters.

Within a year, the Angels had absorbed members of the Para Dice Riders, Satan's Choice and Last Chance, giving them at least 100 members in the Toronto area — the highest concentration of Hells Angels in the world.

In mid-April 2009, police targeted more than 150 people linked with the Hells Angels in early-morning raids mostly in Quebec, but also in New Brunswick, France and the Dominican Republic. They also seized four suspected Hells Angels bunkers.

Bandidos: It's considered the world's second-most powerful criminal biker gang, with more than 2,000 members in 14 countries, according to NGIC's 2009 report, which describes the Bandidos as a "growing criminal threat."

The Bandidos was founded in the 1960s in Texas. The club's old guard was said to be against its absorption of the Rock Machine's Ontario branches for fear of igniting the same kind of war with the Hells Angels that gripped Quebec for much of the 1990s.

In April 2006, eight people — all Bandidos members or associates — were found dead in a farmer's field near the small town of Shedden, Ontario. Police said the killings virtually wiped out the Toronto chapter of the Bandidos.

Outlaws: First established in the United States in 1935, the gang came to Canada in 1978 when several chapters of Satan's Choice in Montreal changed allegiance and set up shop as the Outlaws Motorcycle Club of Canada. The group is known to detest members of the Hells Angels.

16 Biker Gangs in Canada, CBN News: <http://www.cbc.ca/canada/story/2009/04/01/f-biker-gangs.html> (accessed 6 June 2009).

Rock Machine: Second only to Hells Angels in Quebec. A long-running turf war with the Angels left more than 150 people dead as the two fought over the lucrative trade in illegal drugs. The war also led to the passage of anti-gang legislation by the federal government.

As the Hells Angels expanded into Ontario, so did the Rock Machine. The organization established three chapters. In 2001, it aligned itself with the Bandidos.

Satan's Choice: Once one of Ontario's strongest motorcycle gangs, Satan's Choice became part of the Hells Angels' 2000-2001 expansion into Ontario. Satan's Choice had branches in Keswick, Kitchener, Oshawa, Sudbury, Simcoe County, Thunder Bay and Toronto — but nothing outside the province.¹⁷

2.33 The Delegation was told that the structure of these groups varies. Some are structured like a franchised business while others operate under a pyramidal structure. OMCG chapters hold weekly 'church' meetings and some members are required to pay monthly 'church fees' of approximately CAN\$250 (AU\$278). Within chapters individual members can operate their own businesses, and like legitimate businesses, these are increasingly sophisticated. A Criminal Intelligence Service Canada report noted in 2003 that

OM[C]G activity within Canada remains widespread; these groups are continually attempting to widen their influence. OM[C]Gs, particularly the HELLS ANGELS derive their financial income from various criminal activities across the country such as prostitution and fraud. However, drug trafficking, most notably cocaine and marihuana, remains their primary source of income.¹⁸

2.34 Like other serious and organised crime groups, OMCGs are seeking to operate in geographic locations with weak law enforcement capabilities. While the Delegation was in Canada the RCMP was involved in an operation which targeted high-ranking Hells Angels members in Quebec and New Brunswick. One hundred and twenty-three people were arrested, including 111 full-patch members. Significantly, suspected Hells Angels members were also arrested in the Dominican Republic.

2.35 Largely due to their overt public violence and considerable involvement in the manufacture and distribution of illegal drugs, OMCGs remain a key target for Canadian law enforcement. Over the past ten years law enforcement agencies have taken a disciplined and targeted approach to OMCGs. Senior Deputy Commissioner Bill Sweeney talked about the need to maintain a focus on these groups to ensure that they did not grow in strength. The Delegation was told about the successful OMCG

17 Biker Gangs in Canada, CBN News: <http://www.cbc.ca/canada/story/2009/04/01/f-biker-gangs.html> (accessed 1 June 2009).

18 Criminal Intelligence Service Canada, Annual Report 2003: http://www.cisc.gc.ca/annual_reports/annual_report_2003/outlaw_2003_e.html (accessed 1 June 2009).

strategy in which these gangs were targeted in a persistent and strategic way, to identify and target the 'weakest link' in the organisational chain.

Information and intelligence sharing

2.36 Canada has 380 law enforcement agencies and this presents a significant challenge for information and intelligence sharing. Deputy Commissioner Tim Killian noted that traditionally there has not been a culture of information sharing between various law enforcement agencies. Assistant Commissioner Mike Cabana, Organized Crime Committee, Federal and International Operations, Royal Canadian Mounted Police also highlighted legislative barriers to the sharing of information and intelligence:

I was talking about the multi-faceted approach, is to deal with the importance for us of ensuring the enforcement community's ability to share information and intelligence between agencies, both domestically and internationally—there is an issue domestically as well. We need to realize that good intelligence will allow us to have early warning of what is coming down the road and will put us in a position to prevent some of the actions of criminal organizations.

In the legislative reviews, aside from lawful access there's also a need to look at some of the legislation put in place, sometimes several decades ago, governing the exchange of information—including the Privacy Act—to make sure that federal agencies can share the intelligence, among themselves and with the provincial and municipal agencies and vice versa. A gap exists now that is actually putting Canadians at risk.¹⁹

2.37 However, as Canadian law enforcement moves from a reactive approach to organised crime, to a more proactive approach, and investigations are increasingly intelligence-led, there is now a greater requirement for information and intelligence sharing across agencies.

2.38 Lieutenant-Colonel Bud Garrick, the Deputy Director General of the Criminal Intelligence Service Canada (CISC) told the Delegation that a key role of CISC was to bring together the 380 law enforcement agencies through the production of national intelligence products. These products include the 'Report on Organised Crime' and the 'National Threat Assessment'. CISC also administers the Automated Criminal Intelligence Information System (ACIIS), which is a national database for criminal intelligence and information on organised crime. The Delegation was informed that 245 agencies actively use ACIIS with approximately 2.5 million transactions per year.

2.39 Ms Debbie Counsel, also from CISC, noted the tension between the political pressures to increase the number of operational law enforcement officers, and the need for more intelligence-led approaches to law enforcement. It was suggested that in

19 Standing Committee on Justice and Human Rights, Committee Hearing 25 March 2009, by Assistant Commissioner Mike Cabana, Organized Crime Committee, Federal and International Operations, Royal Canadian Mounted Police.

future, as white-collar crime increases, there will be a requirement for a greater intelligence capacity and services for law enforcement.

2.40 Deputy Commissioner Vince Hawkes from the Ontario Provincial Police told the Delegation about the success of the recently established Canadian Integrated Response to Organized Crime (CIROC). CIROC is a committee, established under an agreement between all levels of Canadian law enforcement, which shares information and works in a targeted and coordinated manner against organised crime. Under CIROC intelligence is managed, analysed and shared through a common database which is used by the committee to make operational decisions.

2.41 In addition to highlighting the need for information sharing amongst Canadian law enforcement agencies, Canadian law enforcement also stressed the importance of information sharing between agencies at regional and international levels:

I would like to address ... the need for an increased ability to share information between government agencies, domestically and internationally, to eliminate havens where criminal organizations can flourish. The current environment is one of fear of sharing information, due to either legislative restrictions or human rights concerns. While it is essential to be careful in determining the appropriate information to share and the context within which it is shared or used, this can seriously impede the ability of law enforcement to investigate organized crime.

Organized crime operates from an international perspective. In fact, it can be demonstrated that organized crime is taking advantage of the infrastructure and legislation of certain countries. They are organizing to better insulate themselves. As an example, some criminal organizations have based themselves in India and China to forward precursor chemicals. Other organizations have sought refuge in Caribbean countries, while others are now infiltrating countries of the African continent to use as trans-shipment points.²⁰

Technology and telecommunications access

2.42 In a number of the Delegation's discussions the importance of technology, such as telephone intercepts, was raised, as were the challenges that technology and its rapid development present to law enforcement.

2.43 Commissioner Elliott highlighted issues around access to telecommunications data. The Delegation was told that developments in telecommunications often occur without the provision of 'backdoor access' for law enforcement, so that law enforcement agencies are unable to intercept some of the newer telecommunications technologies. Companies developing these technologies in Canada are no longer under

20 Standing Committee on Justice and Human Rights, Committee Hearing 25 March 2009, by Assistant Commissioner Mike Cabana, Organized Crime Committee, Federal and International Operations, Royal Canadian Mounted Police.

a legal obligation to create an ability for law enforcement agencies to intercept new telecommunications.²¹

2.44 Assistant Commissioner Mike Cabana, Organized Crime Committee, Federal and International Operations, Royal Canadian Mounted Police told the Standing Committee on Justice and Human Rights, that:

...we need to progress is the area of lawful access. While communications technology has evolved considerably and criminals are embracing and taking advantage of it, Canadian law has not kept pace with the rapid changes. Increasingly, complex technologies are challenging conventional lawful access methods. Communication carriers are not required to provide access technology. Law enforcement agencies are simply asking that telecommunication carriers build interception capability into existing or new networks and provide access to important customer name and address information.²²

2.45 Consequently, law enforcement agencies are required to develop their own post-implementation solutions, which can be both complex and costly.

Confiscation of the proceeds of crime

2.46 Law enforcement strategies which target the business model and financial and material assets of organised crime were consistently raised during the Delegation's meetings. Mr Robert Fahlman, Director General of Criminal Intelligence, RCMP and Chief Superintendent Pierre Perron, RCMP, both highlighted the importance of asset confiscation as an effective strategy to disrupt organised criminal activity. In particular, the Delegation was told that by depriving individuals of illegally obtained assets, law enforcement is able to remove the major incentive for illegal and criminal activity.

2.47 A number of the officials with whom the Delegation met raised the merits of Ontario's civil forfeiture regime over the Criminal Code's assets forfeiture provisions.²³ Mr Fahlman noted that the federal proceeds of crime legislation requires a higher burden of proof and therefore presents greater challenges for law enforcement than the Ontario laws.

2.48 As noted above, the Criminal Code provides that assets can be seized if the prosecution proves on the balance of probabilities that the assets are the proceeds of a crime for which the person was convicted. Alternatively, if the prosecution can prove beyond reasonable doubt that assets are the proceeds of crime, no conviction is required to confiscate the assets. Mr Bill Bartlett, Senior Counsel from the Department

21 Part 6 of the Criminal Code previously allowed lawful access to this type of data.

22 Standing Committee on Justice and Human Rights, Committee Hearing 25 March 2009, by Assistant Commissioner Mike Cabana, Organized Crime Committee, Federal and International Operations, Royal Canadian Mounted Police.

23 Ministry of the Attorney General, *Civil Forfeiture in Ontario 2007, An Update On the Civil Remedies Act, 2001*, Ontario, August 2007.

of Justice, told the Delegation that as a result of the higher requirements of Federal Criminal Code, law enforcement was increasingly and successfully using provincial civil confiscation legislation.

2.49 Ontario's *Civil Remedies Act 2001* permits a court, at the request of the Attorney-General of Ontario, to make an order freezing or forfeiting to the Crown, property acquired through, or likely to be used for, unlawful activity. Property includes all types of assets, such as real estate, cars and cash.

2.50 There are three types of cases that the Attorney-General of Ontario can bring under the Civil Remedies Act: a proceeds case, an instruments case and a conspiracy case.

2.51 In a proceeds case, the Crown must establish that property was acquired as the result of unlawful activity. If proven, this property may be forfeited to the Crown by an order of the Ontario Superior Court of Justice.

2.52 In an instruments case, the Attorney-General must establish that the property in question is likely to be used to engage in unlawful activity that could result in the acquisition of other property, including money, or in serious bodily harm to any person. Where the Attorney-General establishes that the property is an instrument, often from past use of the property in an unlawful activity, the Ontario Superior Court of Justice may order that the property be forfeited to the Crown.

2.53 In a conspiracy case, the Crown must establish that two or more people conspired to engage in unlawful activity where they knew or ought to have known that the activity would likely result in injury to the public. The Ontario Superior Court of Justice may award damages for that injury or issue preventive orders.

2.54 The Superior Court of Justice must approve all steps in a civil confiscation proceeding under the act. The Civil Remedies Act authorizes the court to order the preservation of money or property to prevent it from being sold or mortgaged. If the government then proves its case, the court can order the money or property to be forfeited to the Crown. The onus of proof lies with the Crown.

2.55 Deputy Commissioner Vince Hawkes, Ontario Provincial Police informed the Delegation that the Civil Remedies Act has been highly successful and that over a twelve-month period CAN\$41million (AU\$46 million) of assets and funds had been restrained. The legislation has also been effective in that it allows clubhouses and vehicles to be forfeited thereby undermining the ability of organised crime groups to use these assets to undertake further illegal activities.

Disclosure burdens

2.56 The prosecution of serious and organised criminal activity is becoming increasingly complex as a result of the sophistication and complexity of modern criminal enterprises. The Delegation was told that current developments in disclosure requirements impose an enormous financial and resource burden on law enforcement

agencies. In the 1991 Supreme Court of Canada decision *R v Stinchcombe*,²⁴ the issue of 'relevance' vis-a-vis information collected and disclosure by the police and the Crown was tested.

In a 1991 case, *Regina v. Stinchcombe*, the Supreme Court of Canada ordered prosecutors to disclose to the defendant before the trial all relevant information. "Relevant disclosure" is defined as the reasonable possibility that information could be used to meet the crown's case, advance a defence, or make a decision that could affect the conduct of the defence. Disclosure in Canada has become a significant exercise in criminal cases, and issues pertaining to relevant disclosures surface in most major cases today. This can have a significant impact on the cost and progress of investigations and prosecutions.

Courts, crown counsel, defence counsel and police officers across the country have varying interpretations of what "relevant disclosure" is. Within our judicial system, the concept of relevant has been interpreted to the point where the threshold test for relevant disclosure is extremely low. As the investigation of criminal organizations has become complex, the management for purposes of disclosure has become more and more of a challenge. Consequently, this affects our capacity to investigate other criminal organizations.

A quick example of how expanding disclosure can affect an investigation. A few years ago, during a police investigation in Canada targeting a major organized crime group, 1.7 million pieces of communication were intercepted. Of those, 27,000 were transcribed. In the end, only 200 were deemed sufficiently relevant to the case to be used in court.

Investigations can produce an extraordinary amount of documentation. Significant policing resources are allotted to this duty, effectively removing them from front-line policing.

Further, the reality of the volume of disclosure has affected the capacity of law enforcement and prosecutors to attack organized crime as an offence in and of itself. In many instances, prosecution for substantive offences is preferred over organized crime charges. The legal framework and practices must evolve and embrace the efficiencies that can be provided by new techniques and methods such as those provided by electronic technology. Most importantly, there is a need to establish a well-defined and consistent threshold for relevant disclosure. This could be accomplished through enacting disclosure requirements and procedures.²⁵

2.57 The Delegation was told that disclosure requirements in the Canadian justice system have developed to a point where they are problematic. However, the Delegation also heard of some positive developments in regard to the management

24 [1991] 3 S.C.R. 326.

25 Standing Committee on Justice and Human Rights, Committee Hearing 25 March 2009, by Assistant Commissioner Mike Cabana, Organized Crime Committee, Federal and International Operations, Royal Canadian Mounted Police.

and presentation of information. Mr Beardall, Senior Counsel, Public Prosecution Service of Canada, noted that there was a move toward streamlining the disclosure process with a greater acceptance by judges, the Crown, the defence and police of the provision of documents digitally. The Delegation heard of a successful initiative where material gathered during the development of an investigation was compiled on a computer hard-drive. The hard-drive was then provided as part of disclosure requirements, saving both resources and time. It is then at the discretion of the defence as to which pieces of information they wish to access in hard-copy.

Integrated justice units

2.58 During discussions with both the RCMP and Senior Counsel from the Department of Justice and the Public Prosecution Service of Canada, the complexity of the Canadian criminal justice system was raised as a significant challenge facing both the judiciary and law enforcement. The increasing sophistication of organised criminal enterprises and their activities requires the judiciary and law enforcement officers to have greater specialised knowledge. Of concern, was the practice of specialised defence counsel who used the complexity of the case to considerably slow pre-trial motions. In particular, the Delegation heard that time served in custody prior to sentencing is counted on a two-for-one basis. This means that every year in custody prior to conviction reduces the final sentence by two-years. It was suggested that this was a mechanism used by individuals at the high-end of serious criminal charges to significantly reduce prison sentences. This practice was also reported as being responsible for overcrowding in pre-trial detention facilities.

2.59 Mr Bartlett, from the Department of Justice, highlighted a range of reforms currently being implemented in Canada to address the challenges that complex criminal cases present to law enforcement and prosecutors. Integrated Justice Units were flagged as a significant new approach. The Units integrate the investigation and prosecution of criminal cases by having both police and prosecutors involved in cases from the outset. This approach moves away from the more traditional silo approach in which police are responsible for the investigation of a case and then hand it over to the Public Prosecution Service of Canada to prosecute. Integrated Justice Units allow prosecutors to be involved with police to ensure that the case and brief of evidence are collected and prepared in a manner which is compatible with the prosecution process. It was noted that while this approach has little public or political appeal, it has significant benefits for law enforcement.

The Charter of Rights

2.60 Canada has a *Charter of Rights and Freedoms* (the Charter). The Delegation was told that the Charter has been in operation for 26 years and that Canadians broadly support it. However, it was acknowledged that for law enforcement the Charter has had a number of unintended consequences.

2.61 The Charter contains a number of provisions that impact on Canada's options for responding to serious and organised crime, including:

- Subsection 2(d), which guarantees freedom of association.
- Section 7 requires that all laws be 'in accordance with fundamental justice' which has been interpreted to include a requirement of proportionality.²⁶ This means that citizens may challenge legislation on the basis that it is not proportional to the end sought to be achieved.
- Section 7 has also been interpreted as requiring that all criminal laws have a *mens rea* (or mental) element. Therefore all criminal offences attracting penalties of imprisonment require the proof of some level of intent.

2.62 Due to Canadian constitutional guarantees of freedom of association, Canadian criminal legislative approaches have centred on legislation which targets participation in – rather than membership of – a criminal enterprise or organisation. The Charter was also argued to add complexity to the work of law enforcement because of the issues surrounding individual privacy and lawful access to private property.

2.63 The Delegation was told that the *Charter of Rights and Freedoms* has become a mechanism used by those facing criminal trial to stall the judicial process.

The social dimension of crime

2.64 Senior officers of the RCMP noted the link between social exclusion, social disadvantage, and crime. Senior Deputy Commissioner Bill Sweeney from the RCMP noted that 80% of all crimes were committed by 20% of people.

2.65 The Delegation was told that while there has previously been an inclination for law enforcement agencies to focus solely on criminal acts, there is now a growing awareness of the need to balance this with consideration of social and economic issues. Commissioner William Elliott highlighted the need to reconsider the structure of police forces in the 21st Century, as modern police forces are required to have skills beyond traditional law enforcement activities. Accordingly, the RCMP are looking to make investments in a range of skilled individuals including forensic accountants and intelligent analysts. The RCMP has also recognised the importance of targeting the causes of crime, particularly low level, street-gang crime, through social intervention, and has developed greater links with agencies which provide social services.

2.66 The Delegation was told that the RCMP in partnership with First Nation communities is successfully running the 'Community Cadet Corp Program'. The Hobbema Community Cadet Corp website outlines the reason for, and value of, this program:

Several community consultations confirmed that many youth are susceptible to the gang and drug lifestyle due to their desire for an identity that they can be recognized with--whether positive or negative. The increase in gang and drug activity is an expected phenomenon when

26 R. v. Heywood [1994] 3 S.C.R.761.

culture, language and a sense of pride in the family, school and community begin to erode. This problem, especially in First Nations communities, has taken years to evolve and involves a number of dynamics that are beyond what the police can expect to significantly influence. While this is true, as service provider and leading organization in the community, the Police (Royal Canadian Mounted Police) need to be seen to contribute to the health and safety of the community by providing positive alternatives and safety for the youth at risk.

One alternative the Hobbema RCMP implemented is the development of a First Nations Community Cadet Corps Program that is incentive based and closely associated with the schools, community leaders and the RCMP. The Cadet activities are specifically tailored to the needs and concerns of the native reserve youth with a strong emphasis on native culture, language, education, sports and a healthy lifestyle. The goals and objectives of the Program are to prepare the youth for future leadership positions and challenges by mentoring the youth through positive attitudes and social development skills provided by culturally sensitive role models. The priority of the Program is directed to the development of the youth with the assistance of their families, school, community leaders and the Police.²⁷

2.67 Senior Deputy Commissioner Sweeny told the Delegation that over 1000 youth, across a number of communities, are now involved in this program, which has been so successful that it is now also being run in Jamaica.

Peace Bonds

2.68 The Delegation heard from both Mr Bill Bartlett from the Department of Justice and Mr Don Beardall, from the Public Prosecution Service of Canada, about the successful use of Peace Bonds to break the link of 'lower' level gang members to a criminal gang. Peace Bonds were originally developed to tackle domestic violence, and were extended to criminal gangs in 1997. The bonds may place a range of restrictions on individuals who are suspected on reasonable grounds to be likely to commit a criminal offence.

A Peace Bond is a promise, enforceable under the Criminal Code of Canada, to keep the peace and be of good behaviour and to obey all other terms and conditions ordered by a Judge or Justice of the Peace (“JP”), for period of up to twelve (12) months. Judges and JP’s may impose reasonable conditions on those who are subject to the Peace Bond, for example: restrictions on contact with other persons, restrictions on attending certain places, restrictions on possessing firearms and ammunition.²⁸

27 Hobbema Community Cadet Corps, <http://www.hobbemacadets.net/whoware.htm> (accessed on 28 May 2009).

28 Law Societies of the Northwest Territories, *Peace Bonds and Restraining Order*, <http://www.lawsociety.nt.ca/ForthePublic/LegalInformation/PeaceBondsRestrainingOrders/tabid/123/Default.aspx> (accessed 1 June 2009).

2.69 Mr Beardell indicated that Canada had successfully used peace bonds with 'junior' members of street gangs by placing preventative and rehabilitation components in the orders, such as attendance at educational or diversion programs, or non-contact with senior gang members. However, Mr Beardell cautioned that this approach should not be used if police do not have adequate resources to enforce and monitor the peace bonds once ordered.

United States of America

2.70 The Delegation spent a day in Washington D.C. holding discussions with senior officers and subject matter experts from the Federal Bureau of Investigations and the Department of Justice. Discussions covered both the extent and nature of organised crime, as well as key legislative approaches to combat it. The Delegation was interested to learn that the United States of America (US) has approximately 18,000 law enforcement agencies.

2.71 The following section provides some background on the agencies with which the Delegation met, the nature of organised crime in the US, key US legislation targeting organised crime and discusses the key issues and findings from the Delegation's Washington meetings.

United States Organisations with which the Delegation met

The Federal Bureau of Investigations²⁹

2.72 The Federal Bureau of Investigations (FBI) is the United States' key federal agency responsible for tackling, among other things, serious and organised crime. The FBI's stated mission is:

To protect and defend the United States against terrorist and foreign intelligence threats, to uphold and enforce the criminal laws of the United States, and to provide leadership and criminal justice services to federal, state, municipal, and international agencies and partners.

2.73 The FBI's priorities are to:

- Protect the United States from terrorist attack
- Protect the United States against foreign intelligence operations and espionage
- Protect the United States against cyber-based attacks and high-technology crimes
- Combat public corruption at all levels
- Protect civil rights
- Combat transnational/national criminal organizations and enterprises
- Combat major white-collar crime
- Combat significant violent crime
- Support federal, state, local and international partners
- Upgrade technology to successfully perform the FBI's mission

29 Federal Bureau of Investigations, <http://www.fbi.gov/hq/cid/orgcrime/lcnindex.htm> (accessed on 2 June 2009).



Delegation Members with senior officer of the Federal Bureau of Investigation, Washington, D.C.

2.74 As of 31 December 2008, the FBI had a total of 31,676 employees. This includes 12,977 special agents and 18,699 support professionals, such as intelligence analysts, language specialists, scientists, information technology specialists, and other professionals.

2.75 In the fiscal year 2008, the FBI's total budget was approximately US\$6.8 billion (AU\$8.6 billion), including US\$410 million (AU\$518 million) in program enhancements for intelligence, counterterrorism, laboratory, information technology, and cyber security.

2.76 The FBI has a dedicated Organized Crime Section which is divided into three units devoted to: La Cosa Nostra, Italian organized crime and racketeering; Eurasian/Middle Eastern organized crime; and Asian and African criminal enterprises.

2.77 The FBI is tasked with the overall coordination and support of all organised crime investigations. Each of its 56 field offices investigates criminal enterprises within its own territory and relies on headquarters for additional support. The FBI also participates in joint task forces with other federal, state, and local law enforcement agencies.

*United States Department of Justice*³⁰

2.78 The United States Department of Justice was established by statute in June 1870, and is headed by the Attorney-General. The Department's mission is:

To enforce the law and defend the interests of the United States according to the law; to ensure public safety against threats foreign and domestic; to provide federal leadership in preventing and controlling crime; to seek just punishment for those guilty of unlawful behaviour; and to ensure fair and impartial administration of justice for all Americans.

2.79 There are 40 separate components or divisions to the Department. These include the United States Attorneys, who prosecute offenders and represent the United States Government in court; the major investigative agencies which prevent and deter crime and arrest criminal suspects are;

- the Federal Bureau of Investigation,
- the Drug Enforcement Administration,
- the Bureau of Alcohol, Tobacco, Firearms and Explosives,
- the United States Marshals Service, which protects the federal judiciary, apprehends fugitives, and detains persons in federal custody; and
- the Federal Bureau of Prisons, which confines convicted offenders.

2.80 The Department's headquarters are in Washington, D.C., although much of the Department's work occurs in offices located throughout the country and overseas.

The nature of organised crime in the United States

2.81 Mafia type organisations have a significant and historic involvement in organised crime in America. The FBI reported that there are several mafia groups currently active in the US: the Sicilian Mafia; the Camorra or Neapolitan Mafia; the 'Ndrangheta or Calabrian Mafia; and the Sacra Corona Unita or United Sacred Crown.

2.82 It is estimated that, worldwide, these four groups have approximately 25,000 members, with 250,000 affiliates. There are more than 3,000 members and affiliates in the US, scattered mostly throughout the major cities in the Northeast, the Midwest, California, and the South. Their largest presence centres around New York, southern New Jersey, and Philadelphia.³¹ However, as in Australia, the influence of transnational organisations is changing the criminal landscape.

2.83 The FBI reported that the following groups have a significant presence in the US or are targeting American citizens via the Internet and other technologies:

30 United States Department of Justice, <http://www.usdoj.gov/jmd/mps/manual/overview.htm> (accessed 3 June 2009).

31 Federal Bureau of Investigations, About Organized Crime, <http://www.fbi.gov/hq/cid/orgcrime/lcnindex.htm> (accessed on 2 June 2009).

- Russian mobsters who fled to the US in the wake of the Soviet Union's collapse;
- Groups from African countries like Nigeria that engage in drug trafficking and financial scams;
- Chinese tongs, Japanese Boryokudan, and other Asian crime rings; and
- Enterprises based in Eastern European nations like Hungary and Romania.³²

2.84 Mr Matt Desarano, Unit Chief of the Gang Unit, FBI, also identified three types of 'domestic' criminal gangs, each with sizeable membership:

- Streets Gangs – membership: 790, 000 – 842,000
- Prison Gangs – membership 110,000 – 144,000
- OMCG – membership 30,000 – 41,000

2.85 The impact of organised crime in the United States is significant. The economic impact of global organised crime is estimated at around US\$1 trillion per year of illegal profits.

Key United States legislation targeting organised crime

Criminal law

Organised Crime Control Act 1970 (OCCA)

2.86 The OCCA defines organised crime as 'the unlawful activities of...a highly organised, disciplined association...'. The Act creates various offences related to management of a gambling business in an attempt to target the businesses associated with organised crime in the US.

2.87 The purpose of the OCCA is:

...to seek the eradication of organized crime in the United States by strengthening the legal tools in the evidence-gathering process by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with those engaged in organized crime.

2.88 The OCCA has thirteen parts, one of which (section 901A) is commonly called the *Racketeer Influence and Corrupt Organizations Act 1970* (RICO Act), and forms Chapter 96 of Title 18 of the United States Code. In addition to introducing the RICO Act, the OCCA contains provisions which:

- permit courts to order the detention and fining of witnesses who refuse, without good reason, to comply with court or grand jury orders or providing false information

32 Federal Bureau of Investigations, About Organized Crime, <http://www.fbi.gov/hq/cid/orgcrime/aboutocs.htm> (accessed 2 June 2009).

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- strengthen perjury laws, so that witnesses can be tried for perjury based solely on contradictions in their testimony
 - limit the ability of witnesses to refuse to testify on the basis that their testimony may incriminate them
 - give the Attorney-General the ability to protect witnesses
 - establish crimes related to running illegal gambling businesses, including protecting an illegal gambling business by obstructing state law, and using income from organised criminal activity to run a business engaged in interstate commerce
 - establish certain types of bombing and arson as federal crimes.

Racketeer Influence and Corrupt Organizations Act 1970 (RICO Act)

2.89 RICO provides for extended penalties and a civil cause of action for criminal acts performed as part of an ongoing criminal organisation. The RICO Act created four new offences:

- section 1962(a) criminalises the investment of the proceeds of a pattern of racketeering or collection of an unlawful debt in an enterprise affecting interstate commerce
- section 1962(b) criminalises acquiring or maintaining an interest in an enterprise through a pattern of racketeering activity or collection of an unlawful debt (e.g. using arson to pressure owners into selling out)
- section 1962(c) criminalises conducting the affairs of an enterprise through a pattern of racketeering activity or collection of an unlawful debt (e.g. a car dealer who uses the business to assist a stolen car ring)
- section 1962(d) criminalises conspiring to commit any of the above three offences.

2.90 A 'pattern of racketeering activity' is defined as the commission of two or more predicate offences which includes extortion, theft, drugs and fraud, within a ten year period. The Act enables the Federal Department of Justice to use otherwise state-based crimes as predicate offences in any Federal Court.

2.91 The penalty for racketeering is a maximum of 20 years imprisonment and/or a fine of US\$250 000 (AU\$316 000). In addition, a convicted person must forfeit all ill-gotten gains.

2.92 In addition to proving the predicate offences under whichever legislation criminalises those activities, prosecutors must also prove that:

- the individuals are associated with one another
- the predicate acts are related, and occurred within a ten year period, and
- the criminal acts have some impact on interstate commerce (e.g. withdrawing money from an interstate bank account).

2.93 With regard to the conspiracy offence, there is no requirement of an overt or specific act. So long as they share a common purpose, conspirators are liable for acts of their co-conspirators.

2.94 Therefore RICO aims to disrupt enterprise-oriented criminal activity. 'Enterprises' can be criminal organisations or legitimate businesses, individuals, partnerships, corporations, associations, other legal entities, or people who don't form a legal entity but 'are associated in fact'.

2.95 The RICO laws are unique in that they also allow private parties to sue 'racketeers' for damage to their business property. If successful, the court may award triple damages to the business owner.

Proceeds of crime laws

2.96 Under the RICO Act the Attorney-General may seek a restraining order to temporarily seize the assets of a person who has been charged under the Act.

2.97 The *Civil Asset Forfeiture Reform Act of 2000* also created a civil forfeiture regime under which the assets of persons under investigation for, being tried for or convicted of a large number of offences may be frozen or confiscated by the government.

Key issues and findings

Racketeer Influence and Corrupt Organisations Act 1970

2.98 Much of the Delegation's discussions in the United States focused on the RICO laws.

2.99 The Delegation met with Mr Matt Herron, Section Chief of the Criminal Investigation Division, FBI. In an interview, Mr Herron outlined the value of RICO to tackling criminal organisations:

RICO stands for Racketeering Influence and Corrupt Organization statute. And basically it is legislation that enables us to attack a criminal enterprise as opposed to just individual members of the organization... what we do is we will open up a RICO case on a particular group, and instead of charging maybe one or two or three individuals for committing an assortment of crimes, we can identify the organization itself as a criminal enterprise. And as long as they are engaged in predicate acts that fall within the RICO statutes, we will charge that and basically take out the entire leadership of an organization as opposed to an individual or two.³³

2.100 US Department of Justice officials told the Delegation that the RICO legislation has been highly successful. In part, its success is based on the fact that law

33 Federal Bureau of Investigation, Inside the FBI, <http://www.fbi.gov/inside/archive/inside021309.htm> (accessed 2 June 2009).

enforcement can more readily make a case against a criminal enterprise than the individuals at the top of the structure running the enterprise. Additionally, the Delegation heard that the evidential burden required to establish racketeering activity is so high that members of the criminal enterprise, once identified, would readily give evidence.

2.101 Prior to leaving Australia, delegation members were aware that many Australian commentators felt that the legislation was complex and that cases prosecuted under it were lengthy. However, the Delegation was informed that as the legislation has been in operation in the US for a substantial period of time, law enforcement and prosecution services are now familiar with its operation and have little or no difficulty with the statute.

2.102 Under RICO the Attorney-General may seek a restraining order to seize temporarily the assets of a person who has been charged under the Act. Department of Justice officers highlighted the ability under the RICO legislation to successfully obtain, on a conviction, all assets of the criminal enterprise, including those used in the commission of the offence. The RICO laws are also unique in that they allow private parties to sue 'racketeers' for damage to their business property. If successful, the court may award triple damages to the business owner.³⁴

Confiscation of the proceeds of crime³⁵

2.103 As in other jurisdictions, non-conviction-based, civil asset confiscation laws are increasingly viewed in the US as an effective tool for disrupting and dismantling serious and organised crime. The Delegation was informed that the new Attorney-General, Mr Eric Holder, has changed the emphasis of federal justice, prosecution and law enforcement agencies to provide a greater emphasis on civil remedies.

2.104 Non-conviction-based, civil confiscation laws involve *in rem* actions, meaning that the property is the subject of judicial proceedings, as opposed to a person. This means that no conviction is required or recorded, the civil burden of proof is used (the balance of probabilities) as opposed to the criminal burden (beyond reasonable doubt), and a judgment is enforceable against the property not the person so that it remains enforceable even if the property is transferred to another person after the judgement. In the US this approach has already resulted in the confiscation of a number of illegally funded businesses.

2.105 As noted at paragraph 2.97, the *Civil Asset Forfeiture Reform Act of 2000* creates a civil, non-conviction-based forfeiture regime under which the assets of persons under investigation for, being tried for or convicted of a large number of offences may be frozen or confiscated by the government.

34 Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into legislative arrangements to outlaw serious and organised crime groups*, Submission 16, p. 16.

35 United States Department of Justice, Assets Forfeiture and Money Laundering Section, <http://www.usdoj.gov/criminal/afmls/> (accesses 2 June 2009).

2.106 The Delegation was told that approximately US\$1billion (AU\$1.26 billion) are seized under these provisions each year. The *Comprehensive Crime Control Act of 1984* established the Department of Justice Assets Forfeiture Fund to receive the proceeds of forfeiture and to pay the costs associated with such forfeitures, including the costs of managing and disposing of property, satisfying valid liens, mortgages, and other innocent owner claims, and costs associated with accomplishing the legal forfeiture of the property. The Attorney-General is authorised to use the Assets Forfeiture Fund to pay any necessary expenses associated with forfeiture operations such as property seizure, detention, management, forfeiture, and disposal.³⁶

2.107 The Fund can also be used to finance certain general investigative expenses. Department of Justice officials highlighted the value of the Fund to support joint law enforcement operations and enhance cooperation between the various police jurisdictions. Expenses and various costs incurred by state and local law enforcement officers participating in joint law enforcement operations with a federal agency can be covered by the Fund. The Delegation heard that approximately US\$30 million (AU\$38 million) is provided each year to law enforcement to conduct electronic surveillance, and US\$27 million (AU\$34 million) is provided to support the Safe Streets, Gang Unit.³⁷

Technology and telecommunications access

2.108 Officers from the Department of Justice highlighted the importance for law enforcement to be able to intercept telecommunications in order to conduct electronic surveillance. The Delegation heard that before any telecommunications provider can roll-out services they must provide 'backdoor' access for law enforcement.

2.109 *The Communications Assistance for Law Enforcement Act 1994* (CALEA) is a United States statute which provides for this. The purpose of CALEA is:

To amend title 18, United States Code, to make clear a telecommunications carrier's duty to cooperate in the interception of communications for Law Enforcement purposes, and for other purposes.

2.110 CALEA enhances the ability of law enforcement and intelligence agencies to conduct electronic surveillance by requiring that telecommunications carriers and manufacturers of telecommunications equipment, modify and design their equipment, facilities, and services to ensure that they have built-in surveillance capabilities. A paper from the Congress Research Service notes:

The Communications Assistance for Law Enforcement Act (CALEA, P.L. 103-414, 47 U.S.C. 1001-1010), enacted October 25, 1994, is intended to preserve the ability of law enforcement officials to conduct electronic surveillance effectively and efficiently despite the deployment of new digital technologies and wireless services that have altered the character of

36 United States Department of Justice, Assets Forfeiture Program, The Fund, http://www.usdoj.gov/jmd/afp/02fundreport/02_2.html (accessed 3 June 2009).

37 Discussion with the United States Department of Justice, Washington, 16 April 2009.

electronic surveillance. CALEA requires telecommunications carriers to modify their equipment, facilities, and services, wherever reasonably achievable, to ensure that they are able to comply with authorized electronic surveillance actions.³⁸

2.111 In the years since CALEA was passed it has been modified to include all VoIP and broadband internet traffic. However, the Delegation was told that criminal organisations have sought to evade surveillance of their telecommunications by developing their own broadband internet system using wireless servers.

Corruption

2.112 While not canvassed extensively, some discussion covered the issue of public service and political corruption. The Delegation heard that organised crime protects its business through violence, corruption or both. It was suggested that in the US established criminal groups are politically well-connected and that as a business becomes more sophisticated a group will target individuals in high public office.

Conclusions

2.113 The Delegation's discussions with Canadian and US law enforcement agencies were extremely useful. The key issues arising from the discussions that are of relevance to Australia's consideration of legislative arrangements to combat serious and organised crime include:

- (a) The importance of taking a holistic approach to fighting organised crime. This must include:
 - appropriate investigative powers for law enforcement, including the capacity to intercept telecommunications,
 - strong proceeds of crime confiscation laws, with civil burdens of proof, removing the motive for criminal activity and preventing criminal assets from being used to commit further crimes,
 - the development of criminal laws which target high-level individuals within organised crime groups,
 - social intervention to prevent the involvement of young people in, and development of, low-level street gangs; and
- (b) The pressing need for national, regional and international intelligence sharing and coordination amongst law enforcement agencies, with appropriate mutual legal assistance arrangements to accommodate this.

2.114 The Delegation appreciates the frankness of discussions and the hospitality it received from the North American organisations with which it met.

38 Patricia Moloney Figliola, Congressional Research Service, *Digital Surveillance: The Communication Assistance for Law Enforcement Act*, <http://www.fas.org/sgp/crs/intel/RL30677.pdf> (accessed 2 June 2009).

CHAPTER 3

European approaches to organised crime¹

3.1 The Delegation travelled to a number of European countries to meet with key European and international agencies. Where possible, the Delegation used its time in each country to also hold meetings with national law enforcement agencies or police.

3.2 The Delegation travelled to Italy and Austria at the request of the Minister for Foreign Affairs, The Hon Stephen Smith MP. The Minister specifically requested that the Delegation hold discussions with the United Nations Office on Drugs and Crime (UNODC) in Vienna and the United Nations Interregional Crime and Justice Institute (UNICRI) in Rome. The Delegation also travelled to The Hague, in the Netherlands, to hold discussions with Europol.

3.3 The meetings with the UNODC and UNICRI provided the Delegation with an international perspective on drugs and organised crime. The meetings with Europol provided a picture of organised crime, and successful measures to tackle crime, within the European Union.

3.4 In Italy, Vienna and the Netherlands, the Delegation also used the visit to hold a range of highly informative discussions with each national police force. These discussions provided an insight into the specific law enforcement issues faced within each jurisdiction and the administrative and legislative measures in place to address each country's most pressing issues.

3.5 The details of these meetings and the officials with whom the Delegation met are listed at Appendix C.

3.6 This chapter provides an overview of the agencies with which the Delegation met. It also briefly describes the nature of organised crime in Europe and key legislation targeting organised crime, and canvasses the key issues and findings of the Delegation.

European agencies with which the Delegation met

United Nations Interregional Crime and Justice Research Institute²

3.7 The United Nations Interregional Crime and Justice Research Institute (UNICRI) was created in 1968 to assist intergovernmental, governmental and

1 Many of these meetings required the use of an interpreter, therefore while the information provided in this chapter has sought to be as accurate as possible, errors may in part be due to the translation process and the difficulty in seeking clarification.

2 United Nations Interregional Crime and Justice Research Institute, <http://www.unicri.it/>, (accessed 9 June 2009).

non-governmental organisations in formulating and implementing improved policies in the field of crime prevention and criminal justice. UNICRI's goals are:

- to advance understanding of crime-related problems
- to foster just and efficient criminal justice systems
- to support the respect of international instruments and other standards
- to facilitate international law enforcement cooperation and judicial assistance.

3.8 UNICRI undertakes applied research and technical cooperation projects aimed at providing concrete assistance to requesting countries, in close collaboration with regional and national authorities, and in accordance with their self-perceived goals. UNICRI targets, in particular, regions and countries that for various reasons, including the comparative lack of intervention from other potential assisting entities, are most in need of support in the field of crime prevention and criminal justice. Cooperation projects often take a holistic approach, which tackles legislative, law enforcement and social aspects, and may include services provided by UNICRI, such as documentation, research and training.³

United Nations Office on Drugs and Crime



Delegation Members with Mr Antonio Maria Costa, Executive Director, United Nations Office on Drugs and Crime, and HE Ambassador Peter Shannon, Australian Ambassador to Austria

3 A power point presentation given to the Delegation by Ms Kangaspunta from UNICRI is provided at appendix D.

3.9 The United Nations Office on Drugs and Crime (UNODC) was established in 1997. It operates in 150 countries, and has over 50 field offices around the world.

3.10 UNODC assists member states in fighting illicit drugs, crime and terrorism. Its work consists of:

- field-based technical cooperation projects to enhance the capacity of states to counteract illicit drugs, crime and terrorism
- research and analysis to assist in evidence-based policy making
- assistance to states in the ratification and implementation of the international treaties on transnational crime and drugs, the development of domestic legislation and the provision of services to treaty-based and governing bodies.

3.11 UNODC relies on voluntary contributions, predominantly from governments, for 90% of its funding.

3.12 The UNODC's work is underpinned by six key international treaties and their respective optional protocols.

UN Convention Against Transnational Organised Crime

3.13 The key international treaty on organised crime is the *UN Convention Against Transnational Organised Crime* (Palermo Convention). The Palermo Convention is a multilateral treaty with 147 signatories. It entered into force on 29 September 2003.

3.14 The Palermo Convention aims to:

- Eliminate differences among national legal systems; and
- Set standards for national legal systems.

3.15 The Convention has 4 parts:

- criminalisation
- international cooperation
- technical cooperation, and
- implementation.

3.16 Under the Convention, member states agreed to implement four new offences (if they had not already done so):

- participation in an organised crime group (art 5)
- money laundering (art 6)
- corruption (art 8), and
- obstruction of justice (art 23).

3.17 The Convention defines an organised criminal group as:

[a] **structured group** of **three of more persons**, existing for a **period of time** and acting in concert with the **aim of committing one or more serious crimes** or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other **material benefit**.⁴

3.18 There are three optional protocols to the Convention:

- *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime*, which entered into force on 25 December 2003. There are 127 states parties (including Australia) to this optional protocol.

3.19 This optional protocol has the aim of facilitating a 'convergence in national approaches with regard to the establishment of domestic criminal offences that would support efficient international cooperation in investigating and prosecuting trafficking in persons cases.'⁵ In addition, the protocol aims to set standards for the protection and assistance of victims of trafficking.

- *Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United National Convention against Transnational Organised Crime*, which entered into force on 28 January 2004. There are 119 states parties (including Australia) to this optional protocol.

3.20 This protocol aims to tackle organised criminal groups who smuggle migrants by promoting cooperation amongst states parties and protecting the rights of smuggled migrants.

- *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organised Crime*, which entered into force on 3 July 2005. This optional protocol has 77 states parties. Australia has signed but not ratified the protocol.

3.21 The objective of this protocol is to 'promote, facilitate and strengthen cooperation among states parties in order to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. By ratifying the protocol, states make a commitment to adopt a series of crime-control measures and implement in their domestic law three sets of normative provisions: the first one relates to the establishment of criminal offences related to illegal manufacturing of, and trafficking in, firearms on the basis of the Protocol requirements and definitions; the second relates to a system of government authorisations or licensing intending to ensure legitimate manufacturing of, and

4 *UN Convention Against Transnational Organised Crime*, Article 2(a) (emphasis added).

5 UNODC, *The United Nations Convention against Transnational Organised Crime and its Protocols*, at <http://www.unodc.org/unodc/en/treaties/CTOC/index.html> (accessed 31 March 2009).

trafficking in, firearms; and the third one relates to the marking and tracing of firearms.¹⁶

Anti-Corruption Treaty

3.22 The UNODC is also responsible for the *United Nations Convention Against Corruption*, which came into force on 14 December 2005 (to which Australia is a party).

3.23 The Convention Against Corruption requires states to criminalise a range of corruption activities such as bribery, embezzling public funds, trading in influence, the concealment and laundering of the proceeds of corruption and offences committed in support of corruption such as obstructing justice.

Drug-related treaties

3.24 There are three major international drug control treaties which together aim to codify internationally applicable control measures to ensure the availability of narcotic drugs and psychotropic substances for medical and scientific purposes, and to prevent their diversion into illicit channels. The treaties also contain general provisions on illicit trafficking and drug abuse. The drug-related treaties are:

- The single Convention on Narcotic Drugs – 1961
- The Convention on Psychotropic Substances – 1971; and
- The Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances – 1988.

Europol⁷

3.25 Europol is the European Union law enforcement organisation that handles criminal intelligence. Its aim is to improve the effectiveness of, and cooperation between, the competent authorities of member states in preventing and combating serious international organised crime and terrorism.

3.26 Under Article 3 of the Europol Convention, Europol's principal tasks are to:

- facilitate the exchange of information between the member states
- obtain, collate and analyse information and intelligence
- notify the competent authorities of the member states without delay...of information concerning them and of any connections between criminal offences

6 UNODC, *The United Nations Convention against Transnational Organised Crime and its Protocols*, at <http://www.unodc.org/unodc/en/treaties/CTOC/index.html> (accessed 31 March 2009).

7 Europol, <http://www.europol.europa.eu/> (accessed 31 March 2009).

- aid investigations in the member states by forwarding all relevant information to the national units
- maintain a computerised system of collected information containing data about various criminal offences



Delegation Members with Federal Agent Peter Bodel, AFP and Federal Agent Ray Imbriano AFP, and Europol senior officers, Dr Laslo Salgo, Mr Robert Hauschild and Mr Carlo Van Heuckelom

3.27 The establishment of Europol was agreed in the Maastricht Treaty on the European Union of 7 February 1992. Based in The Hague, Netherlands, Europol started limited operations on 3 January 1994 in the form of the Europol Drugs Unit. Progressively, other important areas of criminality were added. As of 1 January 2002, the mandate of Europol was extended to deal with all serious forms of international crime as listed in the annex to the Europol Convention. The Europol Convention was ratified by all member states and came into force on 1 October 1998. Following a number of legal acts related to the Convention, Europol commenced its full activities on 1 July 1999.

3.28 Europol provides the following justification of its focus and activities:

In the modern world there are no boundaries for organised criminal groups. Because of current technology and access to huge illicit financial resources, these groups are illegally active worldwide. Therefore organised crime

represents a threat to the structure and values of the democratic systems affecting European citizens' security and freedom.⁸

3.29 Europol mainly supports the law enforcement activities of the member states against:

- illicit drug trafficking;
- illicit immigration networks;
- terrorism;
- forgery of money (counterfeiting of the Euro) and other means of payment;
- trafficking in human beings including child pornography;
- illicit vehicle trafficking; and
- money laundering.

3.30 Europol's other priorities include crimes against persons, financial crime and cybercrime. This applies where an organised criminal structure is involved and two or more member states are affected. Europol is also active in promoting crime analysis and harmonisation of investigative techniques within the member states.

Structure and governance

3.31 Europol is headed by a Director who is appointed by the council acting unanimously after obtaining the opinion of the Europol Management Board. The board comprises one representative from each member state and has the overall task of supervising the activities of the organisation.

3.32 The Delegation heard that the European Parliament has just agreed to a new governance and funding model for the agency. Europol will now be directly funded from the European Parliament and from 1 July 2010 will become a European agency. Under the new management model decisions will need to be agreed by a two-thirds majority, preventing a single member state from effectively vetoing a decision as they can now under the requirement for unanimous agreement by the board.

3.33 There are 590 people working at Europol, including 90 Europol liaison officers (ELOs) representing a variety of law enforcement agencies (police, customs, gendarmerie, immigration services et cetera). The ELOs, together with the Europol officers, analysts and other experts, provide an effective, fast and multilingual service 24 hours a day.

8 Europol, <http://www.europol.europa.eu/index.asp?page=introduction>, (accessed 20 February 2009).

Strategy and powers

3.34 Europol has no executive powers. It is a support service for the law enforcement agencies of the EU member states. This means that Europol officials are not entitled to arrest suspects or act without the approval of national authorities.

3.35 Europol only acts on request at present. However, a protocol of 28 November 2002 amending the Europol convention, which has not yet entered into force, will allow Europol to request that competent authorities of the member states investigate a case. Article 3(b) of the protocol states:

Member States should deal with any request from Europol to initiate, conduct or co-ordinate investigations in specific cases and should give such requests due consideration. Europol should be informed whether the requested investigation will be initiated.

3.36 For Europol to become involved in an investigation, two or more member states must first be involved. Second, there must be factual indications that an organised criminal network or terrorism is involved. Thirdly, the case must be within Europol's mandate.

3.37 Europol has neither the technical equipment nor the legal authorisation to wiretap or monitor members of the public by any technological means. Any information being analysed by Europol is provided directly by the cooperating law enforcement agencies. Europol's principal role is to gather, analyse and redistribute data.

3.38 Europol has the power to enter into intelligence sharing agreements with countries outside of Europe. A press release issued on 21 February 2007 by the then Federal Justice Minister, Senator Chris Ellison, announced the signing of an agreement between the AFP and Europol to help in the fight against 'terrorism and transnational crime'. The AFP was the first police force in the Asia-Pacific region to have such an agreement with Europol.

3.39 The AFP now have a liaison officer in Europol's Third Party State Liaison Bureau, allowing them to share specialist knowledge, information on criminal investigation procedures and crime prevention methods. The Delegation was told by senior Europol officers that 'Australia is a very close relative' and that the AFP's contribution to Europol is very highly valued.

Italian law enforcement agencies

3.40 In Italy there are three major police forces: Polizia di Stato, Arma dei Carabinieri, and the Guardia di Finanza. The Delegation met with the Guardia di Finanza, Direzione Centrale per Servizi Antidroga (The Central Directorate for Antidrug Services), Direzione Investigativa Antimafia (Anti-Mafia Investigations Directorate), Criminal Police Central Directorate and the Anticrime Central Directorate.

Direzione Centrale per Servizi Antidroga/Central Directorate for Antidrug Services

3.41 The Central Directorate for Antidrug Services (DCSA) is a multi-agency organisation which coordinates the activities of the various police forces against drug trafficking. DCSA maintains and develops relationships with similar international bodies and manages the 'drug experts network' – currently in 17 locations in drug producing and transiting areas. DCSA is staffed with personnel from Polizia di Stato, Arma dei Carabinieri and Guardia di Finanza.



Delegation Members and Federal Agent Mark Dokmanovic, Australian Federal Police, meeting with officers from DCSA

Guardia di Finanza⁹

3.42 The Guardia di Finanza (Financial Police) (GdF) are responsible for safeguarding the economic and financial security of the state. The GdF plays a leading role in maintaining economic and financial security and works with the other police forces in maintaining order and public security. GdF's strategic directives include:

- fighting tax evasion and avoidance, economic control of the national territory, fighting undeclared trade and labour, fighting illegal gambling, tax and welfare fraud and illegal trafficking
- prevention and suppression of fraud in the financial statements of the state, local authorities and the European Union
- protecting the proper functioning of capital markets, consumer markets and the system of production

9 Guardia di Finanza, Annual Report 2007, http://www.gdf.it/GdIF_in_English/Annual_Report/Annual_Report_2007/index.html (accessed 4 June 2009).

- fighting money-laundering and terrorist financing, the fight against economic crime (brand counterfeiting, audiovisual/food piracy), product safety control and the 'high cost of living' phenomenon.

3.43 GdF has its origins in monitoring of cross-border transactions and military defence. It retains its military status and, unlike the Carabinieri, is part of the Italian Armed Forces. The Guardia di Finanza maintains over 600 boats and ships and more than 100 aircraft to fulfil its mission of patrolling Italy's territorial waters. The Guardia di Finanza has around 68,000 officers made up of agents, non-commissioned officers and police officers.

Direzione Investigativa Antimafia /Anti-Mafia Investigations Directorate

3.44 The Anti-Mafia Investigations Directorate (DIA) is an interagency investigative organisation specialising in mafia investigations all over Italy. The DIA's mission is to coordinate all proactive investigations into organised crime in all its forms.



Members of the Delegation meeting with officers from Anti-Mafia Investigations Directorate

Criminal Police Central Directorate and the Anticrime Central Directorate

3.45 The Criminal Police Central Directorate and the Anticrime Central Directorate (CPCD) is a multi-agency organisation responsible for the coordination of criminal police investigations in Italy and international cooperation by sharing information and operational strategies. To ensure the sharing of information between all levels of Italian law enforcement, the head of the agency is rotated every three

years and can be chosen from either of Italy's major three police forces. It is also responsible for organising cooperation between witness programmes and coordinating general prevention policies and control of territory at a national level.

The Directorate includes:

- International Police Cooperation Service (Servizio per la Cooperazione Internazionale di Polizia), an interagency service for international operational police cooperation. It also comprises the National Central Bureau-Interpol, the Italian Europol National Unit and the S.I.R.E.N.E. Division.
- Criminal Analysis Service (Servizio Analisi Criminale), an interagency service for strategic criminal analysis.
- Central Witness Protection Service (Servizio Centrale di Protezione), responsible for witness protection programmes.

The Netherlands National Police Agency¹⁰

3.46 The Dutch Police consists of 26 police forces, of which 25 forces operate on a regional level. Each regional force is responsible for carrying out policing tasks in its designated region. The 26th force, the Netherlands Police Agency (Korps Landelijke Politiediensten – KLPD) is a nationwide agency that includes police departments for patrolling water, road, air and rail traffic, as well as the diplomatic and royal security forces. The KLPD also provides criminal intelligence, specialist investigation expertise and crime analysis on a national level, and is responsible for dealing with international requests for mutual assistance.

3.47 The KLPD lists its main specialisations as:

- Addressing serious and organised crime.
- Combating violence and terrorism.
- Monitoring the Dutch main routes, information analysis, processing and intelligence back to them.
- Training of police horses and sniffer dogs.
- Organisation of members of the Royal House.

3.48 The KLPD has approximately five thousand employees within the Netherlands and abroad, including 30 liaison officers. Approximately half of the KLPD's work is combating serious and organised crime and terrorism.

10 Interpol, *European Police and Justice Systems – Netherlands*, at <http://www.interpol.int/public/Region/Europe/pjsystems/Netherlands.asp> (accessed 30 March 2009).



Delegation Members meeting with the Netherlands Police Agency, The Hague, Netherlands.

The nature of organised crime in Europe

3.49 The Delegation met with Mr. Antonia Costa, the Director General of the UNODC. Mr Costa expressed his very grave concern over the systemic and destabilizing effects of organised crime globally on civil society. In Mr Costa's view, the 'real climate change' facing humanity is the current social disintegration of civil society in many countries and the fact that many countries are not aware of the massive problems that organised crime will cause in the future.

3.50 In particular, Mr Costa highlighted the connections between failing states and organised crime. As nation states become weaker, governments are more susceptible to corruption and manipulation, and states with lower levels of governance and law enforcement and high levels of poverty and unemployment provide fertile recruitment grounds for organised crime groups.

3.51 Many small countries do not have the capacity to deal with the activities of organised crime and in some cases nations may depend upon the capital investment from organised crime. The Delegation heard about small island nations in the Atlantic which allow the daily transit of aircraft believed to be carrying large quantities of illicit drugs from Colombia into the United States.

3.52 Mr Costa argued that the UN's call for action against organised crime has not been taken up internationally and that it is often large, first world countries, that have not ratified key global conventions, such as the Convention Against Corruption.

3.53 The migration of large populations from North and West Africa into Europe, was identified as a key issue for law enforcement. The Delegation heard from a number of European agencies that nations in West Africa with weak and corrupt governments are becoming havens for serious criminal groups. In particular it was suggested that certain North African groups are involved in the importation, distribution and 'sale on the street' of illicit commodities, including drugs and arms. It was also suggested that in West Africa, some criminal groups fund private armies to protect their 'business interests'.

3.54 Migrant populations present a range of significant difficulties for law enforcement. Language was identified as a key barrier to tackling organised crime in migrant communities, as were high levels of official corruption, a lack of political will and limited law enforcement capacity and intelligence-gathering capabilities in many of the countries from which these migrant groups originate.

3.55 In Italy, the Delegation was told that mafia organisations are the most entrenched, and their criminal activities pervade all aspects of Italian society. Mafia organisations evolved in the second half of the eighteenth century, when prominent local families, through their patronage and support of local communities, became responsible for, and took control of, towns and regions. To maintain their power base these families engaged in violence and extortion and over time have increasingly become involved in profitable illegal activities.

3.56 Law enforcement officers identified four main Mafia groups operating in Italy. These are the Costa Nosa or Sicilian Mafia; the Camorra or Neapolitan Mafia; the 'Ndrangheta or Calabrian Mafia; and the Sacra Corona Unita or United Sacred Crown based in Puglia.

3.57 The Delegation was told that, like legitimate businesses, the mafia have forged international links with business partners, in particular in South America and Northern Africa. The relationship between organised crime groups in these geographic regions is symbiotic, with Italian crime groups placed at the centre of the supply and distribution chain of many illegal substances.

3.58 Throughout Europe the Delegation was consistently told of the global and transnational nature of organised crime. Ms Mari Hamalainen, an analyst at Europol, outlined that criminal enterprises are developing an operational model based upon legitimate international businesses and business hubs. Like legitimate businesses, organised criminal enterprises are establishing business hubs through which a range of illegal commodities can be distributed. The Delegation was told that a number of criminal groups from within the former Russian Federation have established links between international criminal enterprises and can source any illegal commodity and distribute it across the globe.

The scope of organised criminal activity has increased dramatically over the last ten years, and is now believed to present a significant threat to the economies and governance of states. The end of the Cold War and the creation of a Single European Market within the EU have resulted in fewer

barriers to trade, a shift which has encouraged illegitimate as well as legitimate economic activity. Correspondingly, organised crime has become more 'business-like', the structure of criminal organisations imitating international business to take advantage of the increased opportunities for higher profits from transnational illicit activity. A move away from strictly clan-based and localised models of operation has led to an internationalisation of criminal groups' activities, and to much greater cooperation between groups of different nationality and geographical remit to support this.¹¹

Illicit drugs

3.59 While organised criminal groups are involved in any profitable commodity, illicit drugs were discussed as the major area of activity. The profits from illegal drugs are vast. Mr Costa told the Delegation that in 2005, the size of the global illicit drug economy was US\$320 billion (AU\$404 billion). At the time that equated to the 20th largest economy in the world.

3.60 The Delegation heard that in Europe organised crime groups make over €120 million each day in profit from the sale of cannabis (AU\$209 million). Another example told to the Delegation was that in a 2 year period, one Somali drug network made US\$850million (AU\$1.07 billion). It was suggested that funds from the drug trade were used in the purchase of arms in Africa.

3.61 Mr Bernard Leroy from the Organised Crime and Criminal Justice Section in the United Nations Office of Drug and Crime (UNODC), identified that the use of illicit drugs is part of a larger cultural problem in developed countries. He indicated that populations are increasingly turning to chemical solutions for a range of physical, emotional and behavioural problems. Mr Leroy told the Delegation that the consumption of tablets is widely accepted and consequently, it is more acceptable to take illicit drugs in tablet form. Mr Leroy contrasted this to the social stigma still associated with injecting illegal substances.

Heroin

3.62 Mr Robert Hauschild, Head of Drugs Unit at Europol, identified heroin as the most dangerous illicit drug in Europe.

3.63 The Delegation was told that Afghanistan is still the key source country, producing around 900 tonnes of heroin per year or 92% of global production. Different qualities of heroin are supplied to different markets, with high-grade heroin supplied to Western Europe and Australia, and poorer quality heroin going to China and India.

11 Ian Davis, Chrissie Hirst, and Bernardo Mariani, *Organised crime, corruption and illicit arms trafficking in an enlarged EU. Challenges and perspectives*. Saferworld Arms & Security Programme, December 2001.
http://www.online.bg/coalition2000/eng/bilb/organised_crime.pdf, (accessed 9 June 2009).

3.64 The UNODC 2008 World Drug Report notes:

Market consumption patterns appear to have remained largely the same – with the majority of opiates on the market in Europe, the Near and Middle East and Africa continuing to come from Afghanistan, those on the market in Asia sourced from Myanmar and those on the market in North and South America from Mexico and Colombia. The largest seizures of heroin and morphine occurred in Pakistan, Iran and Turkey with seizure levels increasing in 2006.

Opiates remain the main problem drug in terms of treatment. This, combined with the enormous increases in production we are now witnessing, necessitate the rigorous monitoring of demand in the opiate market. While demand has been relatively stable at the global level, the countries surrounding Afghanistan continue to experience increasing levels of use. Increases were also recorded for most countries of East and Southern Africa. Consumer markets in Western and Central Europe seem to be largely stable. Opiates use also remains stable in North America.¹²

Cocaine

3.65 Europe has a rapidly growing cocaine market and it is now a major destination for both Mexican and Columbian cocaine. Compared to the US the penalties in Europe are lower and costs for the commodity are much higher.

3.66 The Delegation heard that one kilogram of cocaine in the US costs approximately US\$25 000 (AU\$31 600), whereas in Europe the cost is significantly higher at €50 000 per kilogram (AU\$87 000). Additionally, it is expected that China and India will become higher users of cocaine as these populations become more affluent and are targeted by organised crime.

3.67 It was also suggested to the Delegation that organised crime groups in West Africa are using gene technology to cultivate and grow the coca plant outside of its native South American climate.

3.68 The UNODC 2008 World Drug Report noted that:

The cocaine market is concentrated in the Americas, although increases in both distribution and use continue to occur in Western Europe and West Africa. The recent increases in both seizures and use in West Africa appear to reflect the development of new distribution routes through West Africa to Western Europe. This has led to a large increase in seizures in both regions. Consumption continues to increase both at destination and along the route. A contraction in the consumer markets of North America has led to a strong decline in seizures in North America. In the USA, the proportion of the workforce testing positive for cocaine declined by 19% in 2007, and

12 UNODC, 2008 World Drug Report, p. 13.

by 36% since 1998. Cocaine use, however, continues to increase in South America.¹³

Amphetamines-type stimulants (ATS)

3.69 Mr Cess Van Spierenberg, the Netherlands National Prosecutor for synthetic drugs, noted that since the 1990s, 3,4-Methylenedioxymethamphetamine (MDMA) was a growing problem in the Netherlands. Canada was identified as a major source for synthetic drugs. However, in recent years, large synthetic drug labs have been established in China and the Philippines with some producing as much as one tonne of ATS per month.



Delegation Members with Mr Robert Hauschild, Head of the Drugs Unit, and Federal Agent Peter Bodel, at the Europol Drug Laboratory in The Hague

3.70 It was suggested that while Indonesia, the Philippines and Malaysia have had limited success in the production of ATS to date, there has been a movement of experienced Dutch cooks to these regions.

3.71 The Delegation was told that Australia is a major consumer of MDMA products. The Australian market is extremely lucrative, and is consequently targeted by organised crime, with one table of MDMA selling in the Netherlands for €2-3 (approximately AU\$4) and the same table selling in Australia for AU\$20-30. The UNODC 2008 World Drug report noted:

13 UNODC, 2008 World Drug Report, p. 13.

ATS manufacture is regionally specific, related both to demand and to the availability of precursor chemicals. Methamphetamine is manufactured throughout East and South-East Asia, North America, and Oceania, where precursors are more readily available and demand is high. Amphetamine continues to be manufactured largely in Europe. Ecstasy is manufactured primarily in North America, Western Europe and Oceania, though there is some production in East and South-East Asia.¹⁴

Cannabis

3.72 UNODC 2008 World Drug Report notes that:

Cannabis continues to dominate the world's illicit drug markets in terms of pervasiveness of cultivation, volume of production, and number of consumers. Cannabis production was identified or reported in 172 countries and territories. The broad levels of use of this drug and its increasing potency make the long term containment of the market especially important. Global cannabis herb production is estimated to have stabilized at around 41,400 metric ton in 2006. Production in 2006 was almost equal to that of 2005, and 8% lower than 2004. The decline in global cannabis herb seizures between 2004 and 2006 was even more pronounced (-27%).¹⁵

3.73 In the Netherlands, the Delegation met with members of the Parliamentary Joint Standing Committee on Justice. Since the 1970s the Netherlands has made the legal distinction between the users and suppliers of 'soft' and 'hard' drugs. In the 1980s coffee shops were established as venues to purchase and take 'soft' drugs such as cannabis. It was argued that coffee shops provided a safe environment for drug use.

3.74 The Delegation was told that support for this approach is declining. It was noted that people from Europe come to the Netherlands to source drugs and that this supply network is now being used for a range of other illegal commodities. The Delegation was told that the Netherlands has always been a trading nation, with Rotterdam the second largest port in the world. However, this trading infrastructure is increasingly being used by organised crime, and the Netherlands has become a hub for criminal activity.

3.75 The issue of legal 'front door' drug sales in the coffee shop and illegal 'back door' drug supply to the coffee shop was also discussed, as was the difficulty for law enforcement to police this arrangement. Attempts to close coffee shops are being met with opposition from the tourism sector.

3.76 During discussions with the Directorate for AntiDrugs Operations (DCSA) the Delegation heard that as a result of Europe's open trade borders, Italy faces a growing problem with the importation of illegal substances from other European countries with different law enforcement regimes. The Netherlands, Poland and

14 UNODC, 2008 World Drug Report, p. 18.

15 UNODC, 2008 World Drug Report, p. 14.

Belgium were identified as the largest producers of synthetic drugs. DCSA officers noted that Italian organised crime groups regularly travel to these countries to source these illegal commodities.

Counterfeit goods

3.77 The Delegation was told about the growing trend in the manufacture and sale of illegal counterfeit goods. Ms Kristina Kangaspunta from UNICRI noted that there has been a growth in counterfeit medicines, and highlighted that 50 per cent of all medicines sold on the internet are counterfeit. Counterfeit medicines present a significant health risks. The following examples of adverse health outcomes from counterfeit medicines are provided by UNICRI:

- In 2007, a Canadian women died from metal poisoning after the ingestion of a counterfeit pill bought on the internet.
- In 2006, more than 100 people died in Panama because of a counterfeit cough syrup.
- In 2005, counterfeit Raki killed more than 20 people in Turkey.
- In 2001, counterfeit Vodka killed at least 60 people in Estonia.

3.78 It was noted that this trend is likely to continue, driven by increasing economic pressures on pharmaceutical businesses. The UNICRI website reports one case involving counterfeit pharmaceuticals.

Seventeen gang members were arrested in Northern China after authorities uncovered a counterfeit pharmaceutical operation; police confiscated 67 different types of counterfeit medication including rabies vaccinations. The imitation rabies vaccination, said to have been manufactured from starch and water, were given to 227 people, all of whom were put immediately under close observation by the local health departments. In addition to 10,000 doses of the rabies vaccine, 20,250 bottles of medicine used to treat cardiovascular diseases and 211 bottles of blood protein were also confiscated. Rabies is one of China's deadliest infectious diseases, according to official figures it killed over 2,000 people in 2006 alone.¹⁶

3.79 In Italy, the Delegation was told of the illegal trade out of China and Eastern Europe of counterfeit cigarettes. In the past these illegal goods were transported to Italy, but as a result of strong law enforcement action and penalties in that country, the trade was reported to have moved to countries with a lower risk of detection and conviction. Again, the harmful effects of counterfeit products were highlighted.

Counterfeit cigarettes from Eastern Europe and the Far East were reportedly being sold for as little as £1 a packet by shopkeepers in Leicester. The counterfeit cigarettes contained higher levels of tar, arsenic, nicotine and other carcinogens and were smuggled into Leicester and sold to

16 United Nations interregional crime and Justice Research Institute, case study, http://counterfeiting.unicri.it/org_crime.php?sec =C, (accessed 9 June 2009).

shopkeepers in bulk at heavily discounted prices. Customs officials issued a warning to consumers as the packaging on the fake cigarettes was indistinguishable from the genuine variety. Organized criminal gangs were thought to be behind the scheme for huge profits to be made from selling counterfeit cigarettes. Officials who seized also a shipment worth millions of pounds analysed the ingredients with alarming results. The fake cigarettes contained extremely high levels of arsenic, cadmium, benzene and formaldehyde, a lethal mix of carcinogens.¹⁷

Cyber-crime

3.80 Mr. Antonia Maria Costa, the Director General of UNODC, told the Delegation that cyber-crime is a sleeping giant and consequently is of major concern to the organisation. The vulnerability of countries to this form of attack is increasing.

3.81 The Delegation was told by Ms Gillian Murray, from the Organised Crime and Criminal Justice Section, UNODC, that while cyber-crime is a growing international threat, there is currently little cooperation at the international level on areas of cyber-crime which do not involve children.

Key Italian and Dutch legislation targeting organised crime

Italy

*Criminal law*¹⁸

3.82 The Italians amended their Criminal Code a number of times between 1982 and 1992 to deal with Mafia-type associations. Each of the amendments was a response to specific incidents, and not 'part of a coherent law enforcement program'. The main amendments in 1982 are referred to as the Rognoni-La Torre law, after the Christian-democrat backer of the laws and the Communist Party leader whose death led to the creation of the laws. There are two aspects to the laws:

- the introduction of new anti-mafia legislation; and
- the ability for courts to seize the assets of those involved in the mafia and their families and business partners.

3.83 Article 416 (bis3) of the Criminal Code provides that:

1. Whoever is part of a Mafia-type conspiracy consisting of three or more people is punishable with three to six years imprisonment. Punishment may be increased by up to one third if the defendant has previously been subject to Mafia preventative measures.

17 United Nations interregional crime and Justice Research Institute, case study, http://counterfeiting.unicri.it/org_crime.php?sec =C, (accessed 9 June 2009).

18 Umberto Santino, *Law Enforcement in Italy and Europe against mafia and organised crime*, available at <http://www.centroimpastato.it/otherlang/mcdona ld.php3>, (accessed 16 June 2009).

2. Whoever promotes or manages or directs such an association is punishable with four to nine years imprisonment
3. Conspiracy is of a Mafia type when whoever belongs to it uses the power of intimidation which arises from Association membership and uses the system of subordination and the omerta (code of silence) that arises from this in order to commit crimes or to obtain – directly or indirectly – control over economic activities, over activities contracted out to the private sector by the State or to obtain unfair profit for himself or for other people.

3.84 If the association uses weapons or threatens to use them, the punishment is increased.

3.85 Simple organised crime is defined in Article 416 based on three elements:

- the presence of association;
- an organised structure; and
- a criminal program.

3.86 Article 416 further defines mafia-type organised crime as having additional characteristics:

The organisation is of the mafia type when its components use intimidation, subjection and, consequentially, silence (omertà), to commit crimes, directly or indirectly acquire the management or the control of businesses, concessions, authorisations, public contracts and public services to obtain either unjust profits or advantages for themselves or others.

3.87 Following the murders in Sicily of mafia judges Falcone and Borsellino in 1992, legislation was passed altering the way mafia crimes were investigated and prosecuted in Italy. Previously, magistrates would guard the information they collected closely, to minimise the risk of invasion of 'their' territory by another magistrate investigating the larger ramifications of organised crime. This was counterproductive for combating organised crime. The legislative amendments included: changes to the way investigations were run, allowing them to be carried out in secret for two years before a target must be informed of the investigation against them; broadening the territorial reach of the central prosecutor to allow more systematic evidence to be obtained from all jurisdictions; and giving investigators wider powers to avoid the obstruction they were facing when investigating cases against political and economic elites.

3.88 The 1992 amendments also made important changes to evidentiary laws, allowing statements made prior to a court hearing to be admissible even if they otherwise would not be. This was intended to reduce the likelihood of witnesses 'disappearing' prior to trial and being unable to give evidence at trial.

3.89 Witnesses are the main source of evidence in organised crime cases in Italy, and they are mostly insiders. Therefore, there are a whole range of legislative

provisions designed to encourage insiders to give evidence, and to protect them when they do. Those who disassociate themselves from other members of the criminal group and cooperate with police or judges are afforded lenient treatment, including:

- a reduction in punishment/expedited release from prison
- relocation and/or witness protection
- financial support
- special treatment while in custody and detention

3.90 Additionally, electronic surveillance and phone tapping may be used 'even if there is no reason to suppose that criminal activities are being pursued in such places' under Article 614 of the Code of Criminal Procedure. This is justified by the fact that alleged directors of organised crime groups are often well known to authorities, but it can be difficult to prove *prima facie* cases against them.

Proceeds of crime laws

3.91 The 1982 Rognoni-La Torre law also introduced proceeds of crime laws in Italy. The laws waive bank secrecy in the event of an investigation, and allow the courts to seize the assets of people involved in a 'mafia conspiracy' as well as the assets of any relatives or associates believed to be acting as a front for the mafia. Any person found guilty of a mafia conspiracy therefore loses their right to financial privacy and may have his or her assets seized without the police needing to demonstrate the person's participation in a criminal act.

3.92 Witnesses who cooperate with police are also required to specify their assets, and those which are derived from unlawful activities must be handed in to be formally seized by the judicial authorities.

Administrative mechanisms to prevent organised crime

3.93 A characteristic of the Italian mafia-type groups is that they use their power to infiltrate legitimate businesses and industries in order to control economic activities.

3.94 Italy was the first European country to implement a system of administrative checks to prevent organised crime groups from infiltrating legitimate businesses. Italian authorities conduct 'criminal audits' to determine whether an individual is likely to make use of a licence, government contract or subsidy for organised crime purposes.

3.95 The anti-mafia legislation that came into force in 1965 enabled the criminal court to prohibit convicted persons from contracting with government. The legislation also provides for a warning system which compels authorities involved in granting permits and contracts to check whether a person is registered on the anti-mafia list.

3.96 However, the system only became effective in the 1980s once the criminal law (discussed above) defined 'mafia organisation', and Italian authorities began to

distinguish the mafia from other organised crime groups and recognise that the groups posed different kinds of problems to authorities.

The Netherlands

Criminal law

3.97 Article 140 of the Dutch Penal Code states that:

1. Participation in an organisation whose object is the commission of crimes shall be punished by a term of imprisonment not exceeding six years or a fifth category fine of 100,000 guilders
2. Participation in the continuation of the activity of a legal entity that has been declared illegal by a final and conclusive decision of the courts and thus dissolved shall be punished by a term of imprisonment not exceeding one year or a third category fine [5,000 guilders]
3. In respect of founders or managers, the terms of imprisonment may be increased by a third

3.98 'Participation' requires proof that an individual takes part in or supports the acts of the organisation which are connected to its criminal purpose. Membership itself is not an offence.

3.99 The 'criminal organisation' must be shown to have a lasting and structured form of association that acts as a unit and whose immediate purpose is to commit crimes.

3.100 It is not necessary for criminal acts to have occurred, only that preparatory actions have been undertaken.

3.101 Some advantages of the way the offences in Article 140 are worded are that:

- the prosecution does not need to prove that an individual personally used violence, so it can be used to prosecute violent crimes committed by several people, and
- constructive participation is criminalised. That is, if a person is proven to be in charge of an organisation, they will be liable for failing to prevent persons within the organisation from carrying out illegal acts.

3.102 Article 140 has been criticised for being too broad, and punishing groups whose main purpose is not the commission of criminal offences. However the addition of this requirement would make the burden of proof much greater for the prosecution and would make the prosecution of corporate crimes much more difficult.

3.103 Article 140 also triggers the use of special investigative powers such as telephone tapping and pre-trial detention after arrest.

Proceeds of crime laws

3.104 Article 36e of the Criminal Code, which came into effect in 1993, provides that the court can make a deprivation order if it is satisfied that a person's involvement in criminal offences has resulted in assets. It is not necessary for the person to be charged with the predicate offences. In this way the laws are similar to Australia's *Proceeds of Crime Act 2002*, as they are not reliant on criminal conviction, but are a civil confiscation regime, with seizure based on a burden of proof more similar to the civil standard used in Australia (the balance of probabilities), than the criminal standard (beyond reasonable doubt).

3.105 A deprivation order requires the confiscation of the amount of assets equivalent to those gained by illegal activity. A criminal financial investigation may be undertaken in order for the authorities to determine the amount of illegally obtained assets.

Administrative mechanisms to combat serious and organised crime

3.106 The Dutch screening and auditing approach under the BIBOB Act,¹⁹ which began in 2003, aims to prevent organised criminals from infiltrating the legitimate business environment.²⁰ The BIBOB Act 'establishes grounds on which administrative authorities can refuse or withdraw permits and subsidies or exclude bidders from tendering procedures'.²¹ It establishes a bureau which, at the request of an administrative agency, can conduct screening checks and advise the agency on whether a permit, subsidy or public contract is likely to be abused for criminal activities.

3.107 The reasoning behind the BIBOB Act is the fear that Dutch authorities could unintentionally facilitate criminal investments in businesses, for example by granting a permit for a person to operate a restaurant that is used for drug dealing.

3.108 The BIBOB Bureau has the authority to consult various sources of information, including police and judicial databases and tax information. It then advises agencies on whether an individual or company should be granted a licence, permit, subsidy or government contract.

3.109 Human rights have been codified in the Dutch constitution, so there are a number of safeguards within the regime to protect the privacy and other rights of individuals. For example, there is a requirement that decisions to refuse a benefit must

19 A Dutch acronym for the title of the Act.

20 Cathelijne Rosalie Annemarie van der Schoot, *Organised Crime Prevention in the Netherlands: exposing the effectiveness of preventative measures*, PhD Thesis, Erasmus Universiteit Rotterdam, 2006, 97.

21 Cathelijne Rosalie Annemarie van der Schoot, *Organised Crime Prevention in the Netherlands: exposing the effectiveness of preventative measures*, PhD Thesis, Erasmus Universiteit Rotterdam, 2006, 97.

be proportional to the ends sought to be achieved. Therefore, the BIBOB Act is limited to sectors in which a threat of abuse by organised crime groups is present (including hotels, catering, brothels).

Key issues and findings

The importance of political will

3.110 Ms Kristina Kangaspunta from the United Nations Interregional Crime and Justice Research Institute (UNICRI) discussed the importance of international collaborative institutions such as the United Nations. However, it was noted that while at an international level member states may agree to adopt and ratify specific conventions there is often an inability to transport these conventions into legislation. Ms Kangaspunta gave a range of reasons for this, including financial or cultural constraints, and a lack of legal or judicial capacity. The issue of political will was raised in a number of discussions as being central to driving both domestic and international responses to organised crime.

3.111 The *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime* was provided as an example of an international framework which has, to some degree, progressed slowly as a result of lack of political will. Ms Kangaspunta told the delegation that while 130 states have signed the protocol, only 45 per cent have adopted the offence of trafficking in people. It was acknowledged that in some jurisdictions, the protocol had had an impact on the establishment of legislation, but generally the use of this legislation is poor. Between 2003 and 2007, 32 per cent of member states recorded no prosecutions, 40 per cent recorded no convictions and 19 per cent, or twenty countries, had no specific offence in regard to the trafficking of people.

3.112 Similarly, the Delegation heard from officers from the Organised Crime and Criminal Justice Section in the UNODC, that although the Palermo Convention was signed 10 years ago, the UN is still unable to monitor the implementation of the convention due to the failure of many states to meet their reporting requirements. Mr Bernard Frahi, the Deputy Director, Division for Operations, UNODC, noted the need for the convention to be reflected in the domestic legislation of a number of member states.

3.113 In Italy, the Delegation was impressed with the level of political commitment to combating serious and organised crime and the activities of the mafia. A number of Italian police officers discussed the 1992 assassinations of Judge Giovanni Falcone and Judge Paola Borsellino. The murder, ordered by the mafia, of these two Judges was the catalyst for change in public opinion and declining support for the mafia. In essence, these murders galvanized public opinion which in turn produced the political will and action required to address both systemic corruption and organized crime.

Corruption

3.114 In Italy, the Delegation heard that mafia corruption of political and public officials is a significant problem. Corruption occurs on two key levels: lower level public officials are bribed to 'turn a blind eye' or assist in the criminal activities of mafia groups, for example officials who allow shipments of cocaine to clear the docks; and high-level officials and politicians award government contracts, or use their political influence, to protect the business interests of powerful mafia individuals.

3.115 In other international jurisdictions criminal groups will often purchase telecommunications companies to avoid law enforcement surveillance of their communications. However, DCSA told the Delegation, that in Italy, organised crime groups have been able to infiltrate and corrupt individuals within these private telecommunications companies.

3.116 The DCSA described what Italian's refer to as the 'third power' in the Italian State. The third power is that of the criminal organisations, and its ability to influence politicians and the state. Mafia organisations recruit white-collar professionals to protect their criminal enterprises and to integrate their enterprises into the legitimate economy. Judges Borsellino and Falcone had claimed, prior to their murders in 1992, that the infiltration of organised crime into the legitimate economy was so significant as to affect the stability of the market itself, and that the Costa Nosta controlled 70 per cent of the Italian export market.

3.117 In an attempt to address this systemic problem, the Italian Government has established a new anti-corruption body which has significant powers. The Delegation heard that if, for example, a local council was found to be corrupt the Ministry of Interior has the authority to remove that council and appoint an administrator.

3.118 The growing potential for, and risk to, civil society of the corruption of governments and public officials was raised in a number of meetings. Mr Bernard Frahi, the Deputy Director, Division for Operations, UNODC, highlighted the importance of police and public sector integrity and noted that in many failing or corrupt states this is an area which is neglected. The Delegation was told about a large amount of cash found in the home of the President of a Latin American country.

3.119 Officers from UNODC also raised concerns regarding South Africa's recent legislative changes to suspend the need to declare the movement of currency into or out of that country.

Confiscation of the proceeds of crime

3.120 Throughout Europe the Delegation repeatedly heard that organised crime is motivated by profit. Mr Jan Boersman, the Head of the Crime Investigation Unit, from the National Police Service Agency (KLPD) in the Netherlands told the Delegation that 'organised crime is just about making money' and that the profits for organised crime are significant.

3.121 Colonel Omar Pace from DIA in Italy, told the Delegation that in order to fight organised crime at an international level, law enforcement has adapted its traditional approach to investigations: with the focus no longer on the individual crimes but upon the illegal movement and accumulation of capital.

3.122 The E.U. has developed a model approach which assists law enforcement to target the proceeds of crime. The approach involves:

- banning the use of cash payments
- the identification and control of all financial operators
- the creation of common databases with the obligation for financial operators to report all suspicious transactions
- strong cooperation between all involved authorities

3.123 Dirigente of the Italian National Police, Mr Raffaele Grassi, highlighted the importance of 'going after the money' and depriving criminal groups of their assets. He noted that:

Mafia members are prepared to spend time in prison, but to take their assets is to really harm these individuals.²²

3.124 Similarly, DCSA officers told the Delegation that 'money gives criminal groups power, without money they have no power'. Colonel Adriano Pirazzi, of the DIA argued that in order to dismantle a criminal organisation, law enforcement and the state must go after assets and profits. By removing the financial assets, the organisation is unable to reinvest those assets in the criminal enterprise making it more difficult to continue the criminal activity.

3.125 General Russo from the GdF, also highlighted the symbolic value of taking the physical assets of the mafia, such as buildings, vehicles and boats, and using these assets for the benefit of the state. The Delegation was told that the GdF had successfully confiscated a luxury villa in Sicily, which was the home of the head of the Sicilian mafia. The villa is now used by the state as a police station.

3.126 Italy has, over the past decades, developed a range of law enforcement 'preventative' measures to seize illegally obtained assets from the mafia. Officers from the DCSA told the Delegation that Chief Police Officers and Public Prosecutors can undertake an investigation into suspected illegally gained assets without establishing a predicate offence. At the conclusion of an administrative investigation the matter can be sent to trial to establish the source of the assets.²³ During this process it falls to the individual to explain the source of their wealth. Prior to the trial process assets can be

22 Mr Raffaella Grassi, Director of Division I, Operational Service Central Anti-Crime Directorate, Rome, Italy, 20 April 2009.

23 Italy has an inquisitorial justice system, so a judge will be inquiring into the source of the assets, unlike in adversarial systems where each side goes to court with a fully prepared case.

seized, and then they are confiscated at the conclusion of the trial. The Delegation was told that this process is both effective and efficient.

3.127 Italian approaches to the confiscation of the proceeds of crime have evolved to extend to the seizure and confiscation of assets which are held by family members or third parties. Additionally, if criminal assets are moved outside of Italy to avoid detection and seizure, a magistrate can order that funds and assets of an equivalent amount held in Italy be confiscated.

3.128 In the Delegation's discussions with the Netherlands Police (KLPD), Ms. Hennie Kusters, Head of the Financial Intelligence Unit (FIU), noted that there has been a fundamental shift in the way that law enforcement tackles organised crime in the Netherlands, with the focus now on the 'money trail'. The KLPD store information regarding unusual financial transactions on a secure database and law enforcement are able to target 'hot spots'. The KLPD have identified that 85% of suspicious transactions involve international money transfers.

3.129 During its discussions with Europol, the Delegation was told that it is generally more difficult to confiscate proceeds of crime in civil law jurisdictions (e.g. Italy and the Netherlands) than in common law jurisdictions (e.g. Australia, the UK, the U.S. and Canada). This is because most civil law jurisdictions have no or little distinction between the burdens of proof in civil and criminal cases – with a judge needing to be satisfied beyond reasonable doubt in both. Thus, in order to confiscate criminal assets, judges in civil law countries must be satisfied beyond reasonable doubt that the assets are the proceeds of crime. This can be contrasted to common law countries, like Australia, where legislatures have enacted laws to the effect that judges must only be convinced on the balance of probabilities (i.e. it being more likely than not) that assets are the proceeds of crime in order for them to be confiscated.

3.130 The Delegation heard, in a number of discussions, that those countries which had in the past had an issue with terrorism were more successful in developing or adapting a civil law legislative framework to tackle serious organised criminal groups. Spain has over a number of years developed legislation to deal with the ETA (Euskadi Ta Askatasuna), the Basque separatist movement. Mr Miravette, the head of the organised crime group unit within Europol told the Delegation that legislation to outlaw a terrorist organisation was now being used on organised crime groups with its lower burden of proof being used to seize and confiscate the assets of criminal organisations. Similarly, Germany has also adapted its terrorist legislation, originally developed to attack the Hamburg Chapter, to organised criminal groups, in order to use a lower burden of proof for assets seizure.

3.131 The Delegation was told that a number of countries have 'preventative' seizure measures. Officers from the Governance, Human Security, and Rule of Law Section, at UNODC highlighted the successful approach adopted in South Africa to target and recover the proceeds of crime.

3.132 The Directorate of Special Operations (also, DSO or Scorpions) was a multidisciplinary agency that investigated and prosecuted organised crime and corruption. It was a unit of the National Prosecuting Authority of South Africa (NPA), consisting of 536 staff including police, financial, forensic and intelligence experts. As a multidisciplinary agency, the Directorate investigated and prosecuted organised crime and corruption.

3.133 The NPA structure included the National Prosecuting Services (NPS), the Directorate: Special Operations (DSO), the Witness-Protection Programme, the Asset Forfeiture Unit (AFU) and specialised units such as the Sexual Offences and Community Affairs Unit and the Specialised Commercial Crime Unit.

3.134 The Delegation was told that despite the unit successfully prosecuting three out of four cases, DSO was disbanded in early 2009 by the new South Africa regime, some of whose members, including the current President Jacob Zuma, had been the subject of DSO investigations. The then South African President Kgalema Motlanthe officially disbanded the DSO late in January 2009.

Special surveillance measures

3.135 Italian law enforcement have available to them 'special surveillance measures' to restrict the movement and communications of mafia members. The Delegation was told that these measures can be used once an individual is indicted as a mafia member. The measures require that the individual report regularly to police, and remain in their place of residence between specified hours. The measures also restrict an individual's travel and their contact and communications with identified individuals.

3.136 These measures are policed by both the local police and the Carabinieri (national police), who are authorized at any time to visit the individual's residence. Any violation of the surveillance measures is a criminal offence.

Witnesses protection

3.137 Ms Kristina Kangaspunta from UNICRI noted the importance of effective witnesses protection in order to tackle organised crime.

3.138 In Italy, the Delegation heard that the mafia are secret hierarchical organisations, with membership often based upon family or geographic bonds and on a strict code of silence. Discussions with the GdF identified the importance of obtaining information from individuals within the mafia in order for law enforcement to prosecute offences.

3.139 Witness protection programs appear not to be universally popular with law enforcement officers, however the importance of the programs is widely accepted. Officers from DCSA indicated that law enforcement has been successful against the

mafia, in part, because of Italy's strong witness protection program. The Delegation was told by one senior officer:

I don't like it, but the program is very useful!²⁴

Informational and intelligence sharing

3.140 All the agencies with which the Delegation met discussed the need for greater international cooperation, and intelligence and information sharing. The transnational nature of organised crime requires law enforcement to collaborate with other domestic agencies and international jurisdictions to a greater degree.

3.141 The value of information sharing is captured in a Nepalese proverb which was told to the Delegation:

If two friends exchange a gift, then they each have one gift. However, if two friends each exchange information, then each will have two things of value.²⁵

3.142 Europe has a number of mechanisms to share law enforcement intelligence, information and resources. In particular, European member countries are well serviced and contribute to international efforts to target transnational crime through their membership to:

- Interpol – 187 member countries
- Europol – 122 member countries
- S.I.R.E.N.E. (Supplementary Information Request at the National Entry)

3.143 S.I.R.E.N.E. (Supplementary Information Request at the National Entry) was established to provide those countries, which opened their borders under the Schengen Agreement,²⁶ with a greater level of law enforcement information exchange. Schengen countries indicate a greater level of transborder crime and therefore the need for greater police cooperation. These countries have also set up the Schengen Information System (SIS), which is a full exchange database for those participating countries.

3.144 Mr Joop Siemers, Supervisor Programs and Postings Abroad, KLPD, also highlighted the value of multilateral E.U. treaties for law enforcement. The Delegation was told that Italy currently has 166 bilateral agreements with more than 65 countries and is currently negotiating 20 new agreements. These agreements cover areas of information exchange which are not covered by Italy's membership to Interpol, Europol or S.I.R.E.N.E. and in those areas which are not confined to the criminal justice system.

24 Mr Raffaella Grassi, Director of Division I, Operational Service Central Anti-Crime Directorate, Rome, Italy, 20 April 2009.

25 Mr Antonio Sessa, Central Directorate for Anti-Drug Operations, Rome, 18 April 2009.

26 The Schengen Agreement was a 1985 agreement between 10 European states to remove border controls.

3.145 E.U. countries also have numerous agreements with non-EU countries. The Australian Federal Police were mentioned by a number of international agencies as a particularly good and highly regarded non-EU partner, as was the Australian Crime Commission for its work with UNODC.

3.146 Australia was identified in a number of the discussions as a destination in which proceeds of crime, particularly mafia funds, are being invested. It was reported to the Delegation that in discussions with the FBI and RCMP, Italian law enforcement were told that mafia funds had been sent to Australia to purchase legitimate businesses.

3.147 However, despite the efforts of law enforcement agencies to share intelligence and information and to develop greater levels of international and domestic cooperation, the Delegation heard of a range of barriers. Mr Miravette, Head of the Organised Crime Group unit in Europol, told the Delegation that international cooperation and information sharing is hampered by whether the jurisdictions or countries operate under common law or civil law. In particular, in civil law jurisdictions, all information and evidence is under embargo until after a case is finalised. This does not allow live information to be shared with other jurisdictions.

3.148 The Delegation also heard about administrative barriers to the sharing of information. In the Netherlands, Ms. Hennie Kusters, Head of the Financial Intelligence Unit (FIU), Netherlands Police Agency (KLPD), noted that while some countries kept a 'blacklist' on individuals involved in money laundering, this information was not shared. Consequently, 'blacklisted' individuals move to other countries within Europe to remit money.

3.149 Dr Laslo Salgo, Assistant Director Serious Crime Department, Europol, made the analogy that, while Europol seeks to assist member states with intelligence and analysis, Europol is like a kitchen: it provides the equipment and the chefs, but it can only prepare a meal on the ingredients (the information) that it is given. Dr Salgo commented that 'if member states want a good meal then they have to provide good ingredients'!

Financial reporting

3.150 Italian legislation prohibits the use of cash for transactions over €12 500 (AU\$21 800). Transactions over this amount are required to be processed through a financial institution. All transactions over €15 000 (AU\$26 000) require the collection and verification of personal details, with these records kept for ten years. Italian banks and financial institutions are responsible for ensuring that they are not involved in money laundering. Strong punitive legislation targeted at the financial sector ensures the cooperation of banks in this area. The Delegation was told of a case in which €160 million (AU\$280 million) of illicit funds was deposited into a bank account in China. The bank failed to comply with the relevant reporting requirements relating to this transaction. Accordingly, the bank was required to pay a penalty of 40% of the money transferred, and bank officials involved in money laundering or in the non-

compliance with financial record keeping and reporting were able to be charged under mafia association legislation.

Technology and telecommunications access

3.151 The Delegation was told that Italian law enforcement has access to two levels of telecommunication interception:

- Administrative interception, which can be undertaken on the suspicion of an individual being a member of the mafia or involved with the mafia. This type of interception does not require a warrant or judicial order and can only be used for information gathering purposes.
- Judicial interception, which is undertaken on the provision of a judicial order and the evidence gained in this process can be use in court.

Charter of Rights

3.152 During discussions with the Organised Crime and Criminal Justice Section in UNODC, the unintended consequences for law enforcement of a charter of rights was raised. It was noted that many countries are seeking to develop civil, non-conviction-based approaches to the confiscation of proceeds of crime. However for jurisdictions with a charter of rights, this can be more difficult, particularly if the charter includes property rights and provisions about court procedures and permits the judiciary to overturn legislation on the basis of inconsistency with human rights.

3.153 Officers from the Organised Crime Group Unit at Europol, further noted that the freedom of association protections in the Netherlands have had the effect of stalling the judicial process in that country, with one case running for over 6 years as the defence challenged the Parliament's ability to criminalise membership of a criminal group.

Serious organised crime and terrorism: the balancing point

3.154 Dr Salgo from Europol told the Delegation that after the 9/11 attacks in the United States, Europol received a great deal of funding to focus its analysis on terrorism. Terrorism is still considered the highest priority threat, with its effects on civil society being likened to a war.

3.155 Mr Robert Hauschild, Head of Drugs Unit at Europol, commented that the greater focus on terrorism was because its impacts were immediate, 'like a bleeding wound' whereas, organised crime was like a cancer, its effects are not obvious but in the long term are far more damaging as it can corrupt governments and whole societies. The Delegation was told that in this current period of global financial crisis, there will be greater opportunities for organised crime to infiltrate society. It was suggested that organised crime groups will launder money by funding public buildings such as hospitals and schools, and by investing in large manufacturing companies.

Conclusions

3.156 The Delegation's discussions with international organisations and law enforcement agencies in Europe gave the Delegation an excellent insight into the importance of, and challenges inherent in, developing international cooperative regimes for sharing criminal information and intelligence.

3.157 The key issues arising from its discussions in Europe that the Delegation considers most relevant to Australia in developing effective ways to combat organised crime included:

- (a) The importance of global and regional approaches to combating organised crime. The Delegation was also made acutely aware of the enormous challenges that the world faces in developing international approaches to transnational crime, key amongst them the lack of political will and challenges posed by weak and corrupt governments.
- (b) The need for effective witness protection programs
- (c) The need for strong laws targeting money laundering and criminal assets. The Delegation was made aware of the necessity to stop the accumulation of criminal assets, and remove the financial motive of organised crime. The Delegation's discussions with European agencies presented a range of ways in which this may be done, including through:
 - Greater levels of financial reporting controls and penalties on banks for non compliance
 - Strong criminal assets confiscation laws, with civil burdens of proof
 - The need to freeze the assets of criminal groups/individuals prior to trial and conviction
- (d) The need to consider the balance between serious organised crime and terrorism in terms of the focus for law enforcement and level of resourcing.

3.158 The Delegation appreciates the informative, frank discussions it had with international, European, Italian and Dutch agencies. The Delegation is also grateful for the hospitality it received from the organisations with which it met in Europe.

CHAPTER 4

United Kingdom approaches to organised crime

4.1 The Delegation travelled to the United Kingdom to hold discussions with the Serious Organised Crime Agency (SOCA), whose function is similar to that of the Australian Crime Commission over which the Parliamentary Joint Committee on the Australian Crime Commission has an oversight role.

4.2 The Delegation also held meetings in London with a range of key law enforcement and border control agencies, and with a number of industry-funded bodies responsible for the detection of financial fraud.



Delegation Members outside the Metropolitan Police Service Headquarters, New Scotland Yard, London.

4.3 This chapter provides an overview of the agencies with which the Delegation met. It briefly describes the nature of organised crime in the United Kingdom and sets out the key legislative framework to tackle serious and organised crime. Finally, this chapter discusses the key issues and findings arising out of the Delegation's discussions in London.

UK agencies which the Delegation met

*Serious and Organised Crime Agency*¹

4.4 The Serious and Organised Crime Agency (SOCA) was created in 2006 to lead the UK's efforts to combat serious and organised crime. 'SOCA is an intelligence-led agency with law enforcement powers and harm reduction responsibilities.'² The Assets Recovery Agency merged with SOCA in April 2008, 'meaning that SOCA now has both civil and criminal powers to reduce the impact of organised crime.'³ SOCA has the power to:

- Seize the profits of criminal activities and redirect a portion of them back into law enforcement
- Compel co-operation with investigators, so that the suspects and their associates have to surrender relevant documents to investigators when requested
- Intercept user logs and emails of suspected criminals
- Impose conditions on convicted organised criminals post-release, such as tighter restrictions on where they travel and who they associate with, and
- Use incentives such as sentence reductions to encourage criminals to inform on their associates.

4.5 SOCA is led by a board with 11 members. The non-executive Chair, who is appointed by the Home Secretary, is responsible for the overall approach of SOCA. The current Chair is Sir Stephen Lander, a former head of MI5. Day-to-day leadership is provided by the Director General, Bill Hughes, who is able to designate SOCA officers as having the powers of a police constable, a customs officer or an immigration officer.

4.6 SOCA is organised into four directorates:

- intervention (finding ways to obstruct organised criminals);
- intelligence (building up a detailed picture of organised crime gangs);
- enforcement (investigating organised crime gangs);
- corporate services (the administrative back-up to the operational side).

4.7 The Home Secretary sets SOCA's strategic priorities and judges the success of its efforts. Within that framework, SOCA plans its priorities, including determining how it will exercise its statutory functions and what performance measures it will adopt.

1 Serious and Organised Crime Agency, <http://www.soca.gov.uk/>. (accessed 11 June 2009).

2 Serious and Organised Crime Agency, *About Us*, <http://www.soca.gov.uk/aboutUs/index.html> (accessed 17 June 2009).

3 Commonwealth Attorney-General's Department, *Submission 16*, p. 12.

4.8 The Chair of the SOCA board, is responsible for SOCA's overall approach, its relationship with ministers and government generally, SOCA's strategy and, with the non-executive directors, for oversight of its operational performance.

4.9 The Director General is also appointed by the Home Secretary, and is responsible for everything SOCA does operationally and administratively. The Director General is responsible for the day-to-day leadership of SOCA's management team and for the appointment, accreditation and direction of its other staff. As Accounting Officer, the Director General is responsible for SOCA's expenditure and accounting arrangements.

4.10 The SOCA board has determined five general priorities to guide SOCA:

- to build knowledge and understanding of serious organised crime, the harm it causes and the effectiveness of different responses;
- to increase the amount of criminal assets recovered and the proportion of cases in which proceeds of crime are pursued;
- to increase the risk to serious organised criminals operating in the UK through proven investigation capabilities and in new ways;
- to collaborate with partners in the UK and internationally to maximise efforts to reduce harm; and
- to provide agreed levels of high-quality support to SOCA's operational partners and, as appropriate, seek their support in return.

4.11 The SOCA board has decided that around 40 per cent of SOCA's effort should be devoted to combating drug trafficking, 25 per cent to tackling organised immigration crime, 10 per cent to individual and private sector fraud, 15 per cent on other organised crime and the remaining 10 per cent on supporting other law enforcement agencies.

4.12 SOCA operates from at least 40 offices across the UK. SOCA officers are empowered to perform a number of surveillance roles traditionally associated with British intelligence services, such as MI5, however, unlike MI5 officers, some designated SOCA officers enjoy powers of arrest. Unlike traditional police officers, SOCA officers are not required to swear an oath to uphold the law but are civil servants answerable only to the government. SOCA officers have powers of arrest equivalent to those of sworn police officers and SOCA is exempt from the provisions of the *Freedom of Information Act 2000*.

4.13 SOCA officers are drawn from a range of agencies. The Delegation was told that approximately 25 per cent are former police officers, 25 per cent joined from Customs and the remaining 50 per cent are drawn from the wider community and public service. The Act does allow the secondment of police officers but SOCA has not adopted this approach.

The Metropolitan Police Service⁴

4.14 The Metropolitan Police Service is the largest of the police services that operate in greater London. The other police services operating in London include the City of London Police and the British Transport Police.

4.15 The Metropolitan Police Service employs 31 000 officers, 14 000 police staff, 414 traffic wardens and 4 000 Police Community Support Officers (PCSOs), as well as being supported by over 2 500 volunteer police officers in the Metropolitan Special Constabulary (MSC) and its Employer Supported Policing (ESP) programme. The Metropolitan Police Service covers an area of 620 square miles and a population of 7.2 million.

Specialist Crime Directorate

4.16 The Specialist Crime Directorate's (SCD) 5 500 staff are involved in London's most high profile and serious cases. SCD has refocused its work in 2006-07 on the corporate objective of disrupting criminal networks, seizing their assets and reducing the harm they cause. This new approach aims to understand and tackle criminal networks at all levels, from street gangs in neighbourhoods to sophisticated groups also operating nationally and internationally, in order to reduce the harm and fear they cause in communities.

4.17 A focus of this strategy is neighbourhoods and communities. Therefore intelligence from community engagement, Safer Neighbourhood Teams and boroughs, is essential in both identifying those networks causing the greatest harm, and successfully disrupting them.

4.18 Led by Assistant Commissioner John Yates, the Directorate's objectives are:

- disrupting criminal networks, seizing their assets and reducing the harm they cause
- delivering the highest standards for homicide investigation and preventing homicide and other serious crimes by using disruption tactics
- safeguarding children and young persons from physical, sexual and emotional abuse
- developing capability of SCD to combat serious crime and criminal networks
- coordinating covert assets
- increasing the number of offenders brought to justice as a result of forensic intervention
- being a well managed, effective, efficient and professional directorate.

4 The Metropolitan Police Service, <http://www.met.police.uk/>, (accessed 11 June 2009).

*United Kingdom Home Office*⁵

4.19 The Home Office is the lead government department for immigration and passports, drugs policy, counter-terrorism and police. Departmental objectives are to:

- help people feel secure in their homes and communities
- cut crime, especially violent, drug and alcohol related crime
- lead visible, responsive and accountable policing
- protect the public from terrorism
- secure borders and control migration for the benefit of the country
- safeguard people's identity and the privileges of citizenship
- support the efficient and effective delivery of justice

4.20 The Home Office is headed by the Home Secretary. Home Office headquarters contain:

- the Office for Security and Counter-Terrorism, which works with other departments and agencies to ensure an effective and coordinated response to the threat of terrorism
- the Crime and Policing Group, which works through the police service and other partners
- a small strategic centre, which advises the Home Office board on strategy and direction, as well as the allocation of resources
- professional services, including legal advice and communications support, and programme and project management support

4.21 Three agencies provide directly managed frontline services from within the Home Office:

- The UK Border Agency:
 - strengthens borders
 - makes fast-track asylum decisions
 - ensures and enforces compliance with immigration laws
 - boosts Britain's economy by bringing in the right skills from around the world
 - ensures Britain is easy to visit legally
- The Identity and Passport Service:
 - issues passports to British nationals living in the UK

5 UK Home Office, <http://www.homeoffice.gov.uk/about-us/>, (accessed 13 June 2009).

- develops the national identity programme to provide a secure and straightforward way to safeguard personal identities from misuse
- The Criminal Records Bureau:
 - helps organisations in the public, private and voluntary sectors verify whether job applicants are suitable to work with children or other vulnerable people by checking their criminal backgrounds

4.22 The Home Office is also responsible for the Police Service in England and Wales.

UK Border Agency⁶

4.23 The UK Border Agency is an agency of the Home Office which was formed in April 2008 to improve the United Kingdom's security through stronger border protection while welcoming legitimate travellers and trade.

4.24 The Agency brings together the work previously carried out by the Border and Immigration Agency, customs detection work at the border from Her Majesty's Revenue and Customs (HMRC), and UK Visa Services from the Foreign & Commonwealth Office (FCO).

4.25 The agency operates globally with 25 000 staff - including more than 9 000 warranted officers - operating in local communities, at UK borders and across 135 countries worldwide. UK Border Agency has an annual budget of £2 billion (AU\$4.1 billion).

4.26 UK Border Agency Board is divided into five unified operations areas:

- borders
- international
- immigration
- intelligence
- criminality and detention.

4.27 Each operational area is led by a director. In March 2008 the agency appointed a senior police officer to the board as a non-executive director. This appointment was recommended in the Cabinet Officer report *Security in a Global Hub* to encourage closer collaboration between the Border Agency, the police and other law enforcement agencies.

6 UK Border Agency, <http://www.bia.homeoffice.gov.uk/>, (accessed 11 June 2009).

*Her Majesty's Revenue & Customs*⁷

4.28 Her Majesty's Revenue & Customs (HMRC) ensure that money is available to fund the UK's public services. HMRC was formed on the 18 April 2005, following the merger of Inland Revenue and HM Customs and Excise Departments.

4.29 HMRC collect and administer:

- Direct taxes:
 - Capital Gains Tax.
 - Corporation Tax.
 - Income Tax.
 - Inheritance Tax.
 - National Insurance Contributions.
- Indirect taxes:
 - Excise duties.
 - Insurance Premium Tax.
 - Petroleum Revenue Tax.
 - Stamp Duty.
 - Stamp Duty Land Tax.
 - Stamp Duty Reserve Tax.
 - VAT.
- HMRC pays and administers:
 - Child Benefit
 - Child Trust Fund
 - Tax Credits.
- HMRC enforces:
 - Border and frontier protection
 - Environmental taxes
 - National Minimum Wage enforcement
 - Recovery of student loans.

7 Her Majesty's Revenue and Customs, <http://www.hmrc.gov.uk/menus/aboutmenu.htm>, (accessed 13 June 2009).

Association of Chief Police Officers⁸

4.30 The Association of Chief Police Officers (ACPO) is an independent, professionally led strategic body. In partnership with government and the Association of Police Authorities, ACPO leads and coordinates the direction and development of the police service in England, Wales and Northern Ireland. In times of national need ACPO – on behalf of all chief officers – coordinates the strategic policing response.

4.31 ACPO's members are police officers who hold the rank of Chief Constable, Deputy Chief Constable or Assistant Chief Constable, or their equivalents, in the forty four forces of England, Wales and Northern Ireland, national police agencies and certain other forces in the UK, the Isle of Man and the Channel Islands, and certain senior non-police staff. There are presently 280 members of ACPO.

4.32 However, the ACPO is not a staff association. ACPO's work is on behalf of the service, rather than its own members.

4.33 The Association has the status of a private company limited by guarantee. As such, it conforms to the requirements of company law and its affairs are governed by a Board of Directors. It is funded by a combination of a Home Office grants, contributions from each of the 44 police authorities, membership subscriptions and by the proceeds of its annual exhibition.

CIFAS – UK Fraud Prevention Service⁹

4.34 CIFAS is the UK's Fraud Prevention Service with 260 members spread across the banking, credit card, asset finance, retail credit, mail order, insurance, savings and investments, telecommunications, factoring, and share dealing sectors.

4.35 Members share information about identified frauds in the fight to prevent further fraud. CIFAS is unique and is the world's first not for profit fraud prevention data sharing scheme.

4.36 The CIFAS fraud avoidance systems allow members to exchange details of applications for products, services or employment which are considered to be fraudulent because the information provided by the applicant fails verification checks. Members can also exchange information about accounts and services which are being fraudulently misused and fraudulent insurance and other claims.

4.37 CIFAS Members also exchange information about the victims of fraud to protect them from further fraud. CIFAS information is not used to assess an

8 Association of Chief Police Officers, <http://www.acpo.police.uk/default.asp>, (accessed 13 June 2009).

9 CIFAS- UK Fraud Prevention Service, http://www.cifas.org.uk/default.asp?edit_id=252-28, (accessed 13 June 2009).

individual's ability to obtain an account, product, facility, insurance policy or employment. It is only used to prevent fraud.

4.38 Members of CIFAS are required to operate effective in-house procedures to enable fraud or attempted fraud to be identified and classified. Basic information on each case is filed on the CIFAS database.

Dedicated Cheque and Plastic Crime Unit¹⁰

4.39 The Dedicated Cheque and Plastic Crime Unit (DCPCU) is a special police unit fully sponsored by the banking industry, through APACS, with an ongoing brief to help eliminate organised card and cheque fraud across the UK. It is a unique body that comprises officers from the Metropolitan and City of London police forces who work alongside banking industry fraud investigators. These officers are supported by bank investigators and case support staff.

4.40 The DCPCU was set up in 2002 to tackle the organised criminal networks that commit cheque and plastic card fraud. The Unit responds to investigations on a nationwide basis including those involving:

- Cash machine fraud
- Plastic card counterfeiting
- Mail non-receipt fraud
- Identity fraud
- Card-not-present fraud (fraud on telephone, Internet, fax and mail order transactions)
- Cheque fraud

4.41 As well as generating its own cases, the Unit receives referrals from banks, card companies and other UK police forces. The main objectives of the Unit include:

to investigate, target and, where appropriate, arrest and seek the successful prosecution of offenders identified as responsible for organised cheque and payment card crimes.

APACS –the UK Payment Association¹¹

4.42 APACS is the UK trade association for payments and for those institutions that deliver payment services to customers. It provides a forum for its members to come together on non-competitive issues relating to the payments industry. APACS works to develop and promote world-class standards for use in payments systems in the UK. At the heart of APACS' role is the need to ensure that the UK payments

10 Dedicated Cheque and Plastic Crime Unit, <http://www.dcpcu.org.uk/HTML/complete.html>, (accessed 11 June 2009).

11 APACS, <http://www.apacs.org.uk/index.html>, (accessed 11 June 2009).

industry operates to the highest international standards and that payments are safe, reliable and resilient.

4.43 One of APACS' key responsibilities is coordinating a whole range of activities to tackle payment-related fraud. One of the most visible recent initiatives has been the introduction of chip and PIN, which has been achieved in partnership with the retail industry.

4.44 APACS forecasts payment trends, conducts market research, carries out lobbying activities, collates industry statistics and assists in developing industry standards and best practices.

4.45 The APACS website record the following information on plastic cards in the UK and how they were used in 2007:

- There were 165.4 million payment cards in issue – 67.3 million credit cards, 5.7 million charge cards and 71.6 million debit cards, 20.2 million ATM-only cards and 0.5 million cheque guarantee cards.
- There are 41.7 million personal debit card holders, representing 84% of the adult population
- The number of personal credit and charge cardholders fell to 30.8million, representing 62% of the adult population.
- The average number of cards per person was 2.4 credit cards and 1.6 debit cards.
- Spending on plastic cards in the UK amounted to £354.2 billion in 2006 (AU\$731 billion), which comprised £221 billion (AU\$456 billion) on debit cards, and £133.2 billion (AU\$275 billion) on credit and charge cards.
- Internet card payments have risen nearly four-fold over the last five years, to £34 billion (AU\$70 billion).
- There were 4.9 billion debit card purchases in 2007, an increase of 9% on 2006, with an average transaction value of £45 (AU\$93).
- There were 1.9 billion purchases made on credit and charge cards in the UK, giving an average transaction value of £63.22 (AU\$131).

United Kingdom Home Affairs Committee¹²

4.46 The Home Affairs Committee, established on 13 July 2005, consists of fourteen Members of Parliament, drawn from the three largest political parties. The Chairman of the committee is The Rt. Hon. Keith Vaz MP.

12 UK Home Affairs Committee, http://www.parliament.uk/parliamentary_committees/home_affairs_committee.cfm, (accessed 13 June 2009).



Delegation members meeting with the Rt. Hon. Keith Vaz MP, Chair of the House of Commons Home Affairs Committee, Parliament House, London.

4.47 The House of Commons appointed the Committee to examine the expenditure, administration, and policy of the Home Office and its associated public bodies. During 2008-09 the Committee undertook inquiries into the following topics: Knife Crime; The Trade in Human Beings: Human Trafficking in the UK; Borders, Citizenship and Immigration Bill; Policing Process of Home Office Leaks Inquiry; Police and the Media and Monitoring of the UK Border Agency.

British Transport Police¹³

4.48 British Transport Police (BTP) is the national police force for the railways providing a policing service to rail operators, their staff and passengers throughout England, Scotland and Wales. BTP police the London Underground system, Docklands Light Railway, the Midland Metro tram system, Croydon Tramlink and the Glasgow Subway.

4.49 British Transport Police has 2 835 police officers and 1 455 support staff. Every day, BTP police monitor the journeys of over six million passengers and 400 000 tonnes of freight over 10 000 miles of track.

13 British Transport Police, <http://www.btp.police.uk/default.aspx>, (accessed 15 June 2009).

The nature of organised crime in the UK¹⁴

4.50 The overall threat to the UK from serious organised crime is high. Broad estimates value the economic and social costs of serious organised crime, including the costs of combating it, at upwards of £20 billion (AU\$41.3 billion) a year.

4.51 Mr Tony Walker from UK Border Agency told the Delegation that the agency sees the illegal movement of goods such as heroin, cocaine, cigarettes, firearms and counterfeit goods and also the illegal movement of people, either children, or adults for the purposes of prostitution. Mr Walker also noted that billions of pounds are repatriated out of the UK each year and then brought back into the country. It is thought that approximately 70 per cent of this currency is the proceeds of crime.

Serious organised criminals, their businesses and logistics

4.52 Many of those known to be involved in serious organised criminal activity in, and directly affecting, the UK are British nationals, including from ethnic minority communities. However, a significant number of foreign nationals are also involved, both in the UK and abroad, reflecting the fact that the trade in illicit goods predominantly originates outside Europe and transits through the EU and neighbouring countries en route to the UK.

4.53 With few exceptions, serious organised criminal activity is directly or indirectly concerned with making money. Most serious organised criminals, especially the more established and successful ones, are involved in more than one area of criminal activity.

4.54 In terms of the scale of serious organised criminal involvement, drug trafficking, especially Class A drugs (Ecstasy, LSD, heroin, cocaine, crack, magic mushrooms, amphetamines), poses the single greatest threat to the UK. The profits made from drugs are a critical factor in the success and spread of serious organised crime, enabling more drugs to be bought, funding other forms of crime, and supporting criminal lifestyles.

4.55 Profitability alone cannot explain the choices that serious organised criminals make. They also look to manage risk by: threatening and using violence; transferring 'hands-on' risks to lower-level criminals or 'dupes'; corrupting law enforcement officers and others involved in the criminal justice process; and using solicitors and accountants to handle their affairs, especially to launder their criminal proceeds.

4.56 Most serious organised criminal activities require some measure of criminal collaboration and infrastructure, and this lies behind the formation of organised crime groups and networks. A wide range of structures exist. Some serious organised criminals belong to established groups with clear hierarchies and defined roles, but

14 The sections is sourced from Serious and Organised Crime Agency, *The United Kingdom Threat Assessment of serious Organised Crime 2008-09*.

many are part of looser criminal networks and collaborate as necessary to carry out particular criminal ventures. Such contacts are reinforced by links of kinship, ethnicity, or long association.

4.57 Serious organised criminals make use of ‘specialists’ who provide a service, often to a range of criminal groups. Services include transportation, money laundering and the provision of false documentation (identity fraud underpins a wide variety of serious organised criminal activities).

4.58 Criminal cash is often moved out of the UK to foreign jurisdictions for placement in the legitimate financial system, investment in property, or used to pay costs. This can be done using couriers or via money transmission services. However, many serious organised criminals make use of financial and legal professionals to handle their financial affairs. This often involves using property purchases and legitimate or quasi-legitimate businesses, typically those with a high cash turnover, to launder criminal proceeds as well as to provide cover for the purchase, delivery and sale of illicit goods.

4.59 Violence, or the threat of violence, is often implicit in the activities of serious organised criminals, and some are willing to commit or sponsor kidnapping, serious attacks, and murder to protect their interests, including recovering debts. Violence also stems from personal disagreements and gang-based rivalries. In some instances, violence or intimidation is used to coerce innocent victims into facilitating crime.

4.60 Corruption has a damaging and corrosive effect upon confidence in the criminal justice system, and on the public and private sector institutions that it affects. Serious organised criminals use corruption to secure assistance from those with information or influence in order to protect or enhance their criminal activities.

4.61 Further findings from SOCA's unrestricted UK Threat Assessment are:

- Firearms – the vast majority of recorded firearms offences in England and Wales are linked to street-gangs. Since 2006 seizures of live firing weapons being brought into the UK have been in larger quantities, in batches of up to 30. Previously there were relatively small numbers seized, often less than five at a time. There has been an increased trend of Baikal gas pistols converted to fire 9mm ammunition entering the UK from Lithuania.
- Cocaine – most cocaine destined for Europe is concealed in large vessels crossing the Atlantic. Possibly in response to successful law enforcement action against these transatlantic shipments, there is increasing evidence of shipments by air to West Africa from where the cocaine is transported to Europe. There is evidence of a two-tier market for cocaine in the UK both at wholesale and street level. Dealers are selling cheaper, more heavily adulterated cocaine to some customers while selling higher purity cocaine to more affluent buyers.
- Heroin – At least 90% of the UK's heroin supply is manufactured from opiates originating in Afghanistan. Poppy cultivation in Afghanistan

continues to rise. There are indications that some opiates are being stockpiled, although it is not known whether this is to regulate the price worldwide or because of overproduction.

- Organised Immigration Crime – the scale of people smuggling far exceeds that of human trafficking. Eastern European traffickers, who trade mainly in Eastern European victims, routinely purchase victims from criminal associates who have trafficked them from source countries, either directly or through agents. The groups are relatively small in size, unsophisticated and rarely engage in end-to-end trafficking, unlike some South East Asian groups who may control the movement of their victims at all stages. Many victims of trafficking work in the sex industry (mainly ‘off-street’) across the UK and not just in metropolitan areas. Based on those identified and recovered, most come from Eastern Europe, the Balkans, China, South East Asia and Africa and this largely reflects the nationality of traffickers involved.
- Non Fiscal Fraud – fraud against large companies may appear to be a ‘victimless crime’, however in practice, everyone is affected, since the income lost to fraud and the costs of measures to combat it are reflected in higher prices. Serious organised criminals are actively involved in many forms of fraud, especially those calling for an effective criminal infrastructure, such as payment card crime, ‘boiler room’ fraud (telesales centres that persuade investors into purchasing worthless or over-priced stock in companies with little or no value) and mortgage fraud. Frauds that offer high profits at lower risk than other forms of criminality are obviously attractive. Some of the profits made from these frauds are used to fund other serious criminal activity.¹⁵

Key United Kingdom legislation targeting organised crime

Criminal law

Research suggests there are no known organised criminal groups in the United Kingdom like the mafia groups associated with the United States. Instead serious crimes are committed by "career criminals who network with each other", which are often small groups, based locally, operating independently with fluid roles and no identifiable structure. The Home Affairs Committee on Organised Crime could not formulate an adequate definition to encapsulate organised crime as experienced in the United Kingdom. Therefore a different approach to that adopted in other international jurisdictions needed to be adopted to address the issues in the United Kingdom.¹⁶

15 Serious and Organised Crime Agency, Press Notice, *The United Kingdom Threat Assessment of Serious Organised Crime 2008-09*, <http://www.soca.gov.uk/assessPublications/UKTA0809.html>, (accessed 13 June 2009).

16 Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into legislative arrangements to outlaw serious and organised crime groups*, Submission 16, p. 13.

Serious Organised Crime and Police Act 2005

4.62 The *Serious Organised Crime and Police Act 2005* provides police with additional powers for the investigation of serious and organised crime, such as greater arrest powers and the ability to compel information pursuant to a disclosure notice.¹⁷

4.63 Disclosure notices are similar to the ACC's coercive powers. They are issued by the investigating authority – the DPP, Director of Revenue and Customs Prosecutions or the Lord Advocate (chief legal officer for the Scottish Government) – a police officer or a designated SOCA officer, if there are reasonable grounds on which to believe that a specified crime has been committed. The specified crimes relate to serious and organised crime activity and include terrorist offences, serious money laundering and tax evasion offences, and serious crimes. A notice can require a person to produce documents or make a statement, except if the documents or information is subject to legal professional privilege.¹⁸ The information obtained under a notice cannot be used in criminal proceedings against the person unless the criminal proceeding relate to the provision of false information in that statement, or refusal to provide information, or if the person makes an inconsistent statement in criminal proceedings.¹⁹

Serious Crimes Act 2007

Unlike other jurisdictions, the United Kingdom model has not attempted to construct offences around organised crime....the final legislation instead focuses on increasing police powers and strategies to combat crime.²⁰

4.64 In 2007, the Serious Crimes Act was enacted, enabling courts to impose control orders on people suspected of organised crime. The Act, which applies in England, Wales and Northern Ireland, creates a new scheme of 'Serious Crime Prevention Orders' (SCPOs), creates a statutory crime of encouraging or assisting crime and merged the Assets Recovery Agency into SOCA (formerly a separate agency dealing with proceeds of crime matters), creating a new proceeds of crime regime.

4.65 The provisions of the Act governing SCPOs came into force on 6 April 2008. Section 1 enables the High Courts of England and Wales and Northern Ireland to make SCPOs containing whatever prohibitions, restrictions, requirements and other terms that the court thinks necessary, if:

- it is satisfied that the person has been involved in serious crime, and

17 Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into legislative arrangements to outlaw serious and organised crime groups*, Submission 16, p. 14.

18 *Serious and Organised Crime and Police Act 2005*, section 64.

19 *Serious and Organised Crime and Police Act 2005*, section 65.

20 Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into legislative arrangements to outlaw serious and organised crime groups*, Submission 16, p. 13.

- it has reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting involvement by the person in serious crime.

4.66 An SCPO may be made on an application by the Director of Public Prosecutions, the Director of the Revenue and Customs Prosecutions Office, the Director of the Serious Fraud Office and the Director of Public Prosecutions for Northern Ireland, to the High Court, or by application to a Crown Court before whom a person appears having been convicted of a serious offence.

4.67 The burden of proof for the court to apply an SCPO is the balance of probabilities.²¹

4.68 SCPOs may only be placed on persons over the age of 18,²² and must be of specified duration, not exceeding five years.²³ The five year limit does not prevent the making of a subsequent order, or provision, in the same or different terms, provided the requirements of section 1 are still met.²⁴

4.69 The breach of an SCPO is a crime, punishable by up to five years imprisonment and/or an unlimited fine. The courts also have the power to order the confiscation of any assets or property involved in the offence.²⁵

4.70 Under section 2, a person has been involved in a serious crime if they have:

- committed a serious offence (drug offences, people trafficking offences, arms trafficking, prostitution, armed robbery, money laundering, corruption, bribery etc)
- facilitated the commission by another person of a serious offence, or
- conducted himself in a way that was likely to facilitate the commission of a serious offence, by him/herself or by another person, whether or not the offence was committed.

4.71 SCPOs can include restrictions to a person's:

- financial, property or business dealings
- working arrangements
- associations/communications with others

21 *Serious Crimes Act 2007*, sections 35-6.

22 *Serious Crimes Act 2007*, section 6.

23 *Serious Crimes Act 2007*, section 14.

24 The Crown Prosecution Service, *Serious Crime Prevention Orders, Serious Crime Act 2007 - Sections 1 - 41 and Schedules 1 and 2*, [http://www.cps.gov.uk/legal/s_to_u/serious_crime_prevention_orders_\(scpo\)_guidance/#A01](http://www.cps.gov.uk/legal/s_to_u/serious_crime_prevention_orders_(scpo)_guidance/#A01), (accessed 15 June 2009).

25 *Serious Crimes Act 2007*, section 26.

- access to and use of premises
- travel
- anything else deemed necessary by the court.²⁶

4.72 SPCOs can also be imposed on businesses and unincorporated associations and can restrict an organisation's:

- financial, property or business dealings
- contracting and agreements
- provision of goods and services
- access to and use of premises
- employment of staff, and
- anything else deemed necessary by the court.²⁷

4.73 An order can also require a person to answer questions or provide information or documents specified in the order. The order can specify how, when and where the question must be answered or the information or documents provided to a law enforcement officer.

Proceeds of crime laws

4.74 The *Proceeds of Crime Act 2002* provides for the confiscation and restraint of proceeds of crime. In order for a person's assets to be confiscated, they must have been convicted. However, in order for a person's assets to simply be restrained, it is only necessary that they are being investigated and that there is reasonable cause to believe that they have committed an offence. The crown must also prove that the accused has benefited from a criminal lifestyle.

4.75 Chapter 3 of the *Serious Organised Crime and Police Act* gives SOCA the power to apply for 'financial reporting orders', which are a civil mechanism of restraining the use of assets by alleged organised criminals. Financial reporting orders may be made against convicted persons and require those persons to provide financial statements and details to authorities periodically.²⁸ Failure to do so is an offence.²⁹

Key issues and findings

Confiscation of the proceeds of crime

4.76 The Director General of SOCA, Mr Bill Hughes, in his introduction to *The United Kingdom Threat Assessment of Serious and Organised Crime 2008/09* notes:

26 *Serious Crimes Act 2007*, subsection 5(3).

27 *Serious Crimes Act 2007*, subsection 5(4).

28 *Serious and Organised Crime and Police Act 2005*, section 79.

29 *Serious and Organised Crime and Police Act 2005*, subsection 79(10).

The vast majority of serious organised criminal activity is directly or indirectly concerned with making money. Criminals may spend their criminally-acquired money on lavish lifestyles, they may invest in valuable assets, or they may use it to fund further criminal activities, in order to increase their wealth, enhance their status, and spread their influence. Recovering the money, whether the cash that is generated or the assets that have been acquired, is therefore a key priority for the UK Serious Organised Crime Control Strategy.³⁰

4.77 Detective Inspector John Folan, Head of the DCPCU, told the Delegation that historically the culture of policing was about 'identifying suspects and getting prosecutions', however this approach, he noted, had failed. Detective Inspector Folan argued that law enforcement needs to focus on targeting the motivation of criminals, which is financial gain, and that this is effective in dismantling criminal groups.

4.78 Mr Ian Cruxton, Proceeds of Crime Office within SOCA, told the Delegation about the effectiveness of the 'criminal lifestyle' provisions under the Proceeds of Crime Act. The provisions aim to recover assets from those who have led 'criminal lifestyles', and require judges to consider this in determining the amount of assets that may be confiscated. If a judge determines that a person has led a criminal lifestyle, then a sum representing the total profit from that lifestyle can be ordered to be paid to the court.

4.79 As part of the process, defendants are required to make a 'statement of means' listing all of their assets. Police will then issue a list of assumptions regarding the statement, which must be disproved by the defendant in order for assets not to be confiscated – e.g. the police might issue a statement assuming that a car was bought with the profits of drug crimes. In this way, the onus of proof is reversed.

4.80 Mr Andy Lewis, Head of Civil Tax Recovery, SOCA, noted that reverse onus of proof legislation has been heavily tested in the UK, but that these challenges have not been upheld in European Union Courts. Mr Lewis provided the Delegation with case judgements regarding the reverse burden of proof in confiscation. Summaries of these are provided at Appendix E.

4.81 Mr Lewis noted that assets confiscated by SOCA have risen steadily each year in line with performance targets:

- 2004-05 £82 million (AU\$169 million)
- 2005-06 £98 million (AU\$202 million)
- 2006-07 £125 million (AU\$258 million)
- 2007-08 £135 million (AU\$279 million)³¹

30 William Hughes, Director General, Serious and Organised Crime Agency, *The United Kingdom Threat Assessment of Serious Organised Crime 2008-09*, p.4.

31 Figures are for confiscation across all agencies.

4.82 The Delegation was told that law enforcement agencies are able to apply for and retain 50 per cent of money confiscated.

4.83 Assistant Commissioner Jon Murphy, National Coordinator Serious and Organised Crime, Association of Chief Police Officers, and officers from SOCA both noted the strength of UK legislation around civil seizure of assets; however, it was acknowledged that the civil recovery process was extremely lengthy, at times taking two to three years to get to trial.

4.84 The Delegation heard from SOCA officers that *The Serious Crime Act 2007* extended the civil recovery and taxation powers of the Assets Recovery Agency to SOCA and, also, the civil recovery powers to the major prosecuting bodies. The Act also provided for the merger of ARA and SOCA, with the effect that SOCA now undertakes civil recovery and tax investigations in England and Wales and Northern Ireland.³²

4.85 Mr Andy Lewis, Head of Civil Tax recovery, SOCA, told the Delegation that SOCA have launched hybrid cases - which are both tax recovery and asset confiscation cases - and this ability to target both aspects of criminal gain has been successful. Additionally, taxation investigation allows the agency to examine records for the 20 years previous.

4.86 However, officers from HMRC highlighted the increasing complexity of criminal tax prosecutions. Mr Euan Stewart, Director of Criminal Operations, HMRC, noted that major VAT prosecutions under the *Criminal Procedures Investigations Act 1996* (Scotland) can take anywhere between five and eight years. The Delegation heard of a case which commenced in 2003 and will not get to court until 2012, and on which 2000 work-days were spent in just one month. Clearly, the increasing complexity of the financial arrangements of those involved in serious organised crime presents major challenges for law enforcement in regard to both the work-hours required to undertake the investigation and prosecution, and the associated cost.

4.87 Mr Paul Golightly, Assistant Director, Criminal Operations, HMRC, also raised the need for stronger powers and 'mutual legal assistance treaties' to recover money which has been remitted internationally. This area is particularly important because, as the Delegation consistently heard, law enforcement often sees the movement of money before the crime, and seizing the money or proceeds of crime harms criminals the most.

Lifetime management of serious organised criminals

4.88 Mr David Bolt, Executive Director Intelligence at SOCA, told the Delegation that the UK, like other jurisdictions, already has a range of approaches to offender management, for example sex offender management programs. Under these

32 Serious Organised Crime Agency, *Civil Recovery*, <http://www.soca.gov.uk/financialinte/assetsRecovery.html>, (accessed 15 June 2009).

approaches, certain individuals have lost the right to 'uncontested space' in society. The UK has extended this approach to develop an offender management approach for serious organised criminals.

4.89 Serious Crime Prevention Orders (SCPOs), which are outlined above, can be made against persons convicted of a serious offence. An order may contain prohibitions, restrictions or requirements; and other terms as the court considers appropriate for the purpose of protecting the public by preventing, restricting or disrupting involvement by the person involved in serious crime.

4.90 Ms Jane Attwood, Deputy Director Prevention and Alerts in SOCA, told the Delegation that SOCA successfully applied, in the first years of the legislation, for 12 SCPOs, and that the Courts supported the addition of restrictions and prohibitions.

4.91 As these orders come into effect once an individual is released from prison, at present there are not large numbers of SCPOs in operation. However, Mr Stephen Webb and Mr Richard Rhodes from the UK Home Office noted that SCPO will 'bite in ten years when a relatively large number of individuals leave prison'. The Delegation was told of the importance of ensuring that SCPOs are effectively monitored, which will be resource intensive. To address the issue of cost the court can appoint an overseer or monitor of the SCPO. The Delegation was told that the cost of this monitor can be covered at the expense of the convicted person.

4.92 Mr Stephen Webb and Mr Richard Rhodes from the UK Home Office noted that SCPOs had raised a number of concerns regarding human rights conventions. However, SOCA officers noted that challenges to the orders and the legislation under which they are made, under Article 8 of the *European Convention on Human Rights Act 1998*, have been unsuccessful.

4.93 Ms Attwood from SOCA also informed the Delegation that the agency was working with the UK prison service to better manage and influence SCPOs and release orders of individuals within the prison population. *The United Kingdom Threat Assessment of Serious Organised Crime 2008/09* notes that:

Serious organised criminals with significant influence can continue to direct their criminal activities from prison. Their main constraint in prison is the ability to meet associates freely or to supervise criminal activity directly. Imprisonment forces them to change their methods of communication and to delegate day-to-day running of their business to associates on the outside. The ability to communicate clandestinely with the outside criminal organisation is crucial. The illicit use of mobile phones in prison is widespread and most inmates have some level of access to them. In some cases SIM cards are smuggled in to prisons and inmates 'rent' the use of mobile telephones from other prisoners to facilitate their use...

Imprisonment provides networking opportunities for serious organised criminals, due to the concentration and ready availability of 'experts' in all areas of organised criminality.

There is clear evidence of serious organised criminals developing their knowledge and expertise while in prison, as well as expanding their networks of criminal associates. Importers and distributors of Class A drugs forge new relationships with overseas supplier networks, and fraudsters identify and develop new methods and contacts that can help facilitate their crimes. These new contacts are often exploited upon release.³³

4.94 The Delegation also heard of a range of lower level administrative or behaviour orders being used at the community level to address criminal activity. Assistant Commissioner Jon Murphy, National Coordinator Serious and Organised Crime, Association of Chief Police Officers noted that Anti-Social Behaviour Orders and local government legislation have been successfully used to manage the movement and behaviour of lower level criminal gang members. In Birmingham, police are using gang injunction orders to arrest, and detain gang members. This approach provides communities with a reprieve from gang activity and also allows a gang member to be removed from the gang and placed into diversion programs.

Information and intelligence development and sharing

4.95 The United Kingdom has 57 separate police forces. These forces vary significantly in size, focus and law enforcement capability and capacity. In several meetings the Delegation was told that historically, there has not been a culture of information sharing between law enforcement agencies. These issues are recognized in the UK, with various attempts in the past few years to both reduce the number of police forces and to increase information and intelligence sharing between them in order to produce a national approach to crime. The establishment of SOCA is intended to provide national coordination and focus in regard to organised crime.

4.96 Mr Martin Peach, Director of Intelligence, UK Border, noted that the inability to pool law enforcement knowledge and intelligence has been a challenge to the development of a national picture of organised crime. Similarly, Mr Paul Golightly, Assistant Director, Criminal Operations, HMRC, noted the lack of a national understanding of 'what organised crime looks like' and therefore the inability for agencies to develop a coordinated national response.

4.97 The Delegation heard of two major national initiatives to develop a national picture of organised crime: the National Threat Assessment; and the national mapping of organised crime groups.

The National Threat Assessment

4.98 The National Threat Assessment is a strategic document which describes and assesses the threats posed to the UK by serious organised criminals and considers how these threats may develop. A restricted version of the document contains information

33 Serious and Organised Crime Agency, *The United Kingdom Threat Assessment of Serious Organised Crime 2008-09*, p. 15.

about law enforcement priorities and relevant initiatives. A public version of the document is produced to improve community awareness of the effects and harms of serious organised crime.³⁴

4.99 Mr David Bolt, Executive Director Intelligence, SOCA, told the Delegation that unless the problems caused by, and threat of, serious organised crime are understood, law enforcement cannot effectively tackle the issue or develop appropriate responses.

4.100 The Delegation heard that the assessment is produced through the amalgamation of information and intelligence from several relevant agencies. Each agency produces a strategic assessment on the risk of organised crime in its sector. These assessments are brought together, under the direction of the Home Secretary, into a single high-level national threat assessment.

Mapping organised crime

4.101 The second major initiative involves mapping organised crime groups, and individuals within these groups, nationally. The mapping exercise also identifies the links between groups, firearms, vehicles, and assets. Assistant Commissioner Jon Murphy, National Coordinator Serious and Organised Crime, Association of Chief Police Officers, is responsible for this project, which aims to identify and map organised crime groups in the UK in order to bring a structured law enforcement approach to tackling these groups.

4.102 Over the past 18 months 43 police forces in the UK have mapped their own jurisdiction's organised crime groups. This data has been aggregated to form regional and national lists, and these lists have been given priority rankings. UK Border agency, HMRC and SOCA have also provided data to the mapping exercise. Nine regional intelligence units, which are multi-agency taskforces, have also been established.

4.103 Assistant Commissioner Murphy told the Delegation that significant numbers of crime groups have been identified. It was noted that while this approach has high-level Ministerial support, there are no specific resources targeted to a law enforcement response. Consequently a tier response, similar to that used in counter-terrorism is being developed, with disruption plans being developed for identified high-risk groups.

4.104 The National Intelligence Model was discussed in the meeting between the Delegation and senior officers of Her Majesty's Revenue and Customs (HMRC). Mr Euan Stewart, Director of Criminal Intelligence, HMRC, noted that the model has three levels: (1) community crime; (2) serious organised crime; and (3) terrorism. Mr Stewart stated that levels 1 (community crime) and 3 (terrorism), are well addressed at

34 Serious Organised Crime Agency, *The United Kingdom Threat Assessment of Serious Organised Crime 2008/09*, p. 3.

the local and national levels respectively. However, he noted that there is a gap in the model with regard to level 2 (serious organised crime).

4.105 The National Threat Assessment and the mapping of organised crime seek to respond to this gap in law enforcement and resources in the 'middle ground' between international crime/terrorism and local/community crime.

Multi-agency approach

4.106 Mr Bill Hughes, the Director General of SOCA noted that the UK's policing model was developed in the 18th century with a strong focus on local or community policing. The Delegation was told that this traditional approach is unable to react to, or adequately detect, organised crime, which is now international and multi-jurisdictional.

4.107 The E-Borders program was discussed with the Delegation as a successful example of the use of technology, information and intelligence sharing, and of a multi-agency approach. Approximately 40 million people travel to the UK annually and the agency is collecting biometric data of all individuals arriving in the UK. The E-Border program has a national targeting centre made up of 22 people from multi-agencies.

4.108 The Delegation heard that as a result of data collected under this program, information has been provided to police which has led to 2500 arrests, including the arrests of several individuals wanted for murder.

4.109 Mr Gordon Miller, Head of Criminal Intelligence Group, HMRC, noted that the HMRC has a Fiscal Crime Liaison Officer Network, which operates in partnership with SOCA. In several meetings the Delegation heard of the importance of 'going after the business model and the money' of organised crime. In light of this, multi-agency approaches to law enforcement are becoming increasingly necessary, with forensic accountants and financial experts forming an important part of the law enforcement teams.

Private/Public partnerships

4.110 The Delegation held meetings with APACS and CIFAS, both of which are industry funded bodies in the financial sector who work with, and partly fund DCPCU, a law enforcement unit, dedicated to policing fraud in that sector.

4.111 APACS began as a pilot program in 2002 as a result of the large amounts of money that banks were losing due to retail fraud. The service offered by APACS is fully funded by industry, with the estimated annual saving to industry in the order of £61 million (AU\$126 million).

4.112 The DCPCU was established in 2002 as part of the pilot program to address the fact that only one UK police force had fraud as a key performance indicator. The City of London Police has become the lead agency for DCPCU. The Unit has 42 staff

made up of approximately one-third from the Metropolitan Police, one-third from the City of London Police and one-third from the banking industry. Police Officers at DCPCU are employed by their home force but are seconded to the unit.

4.113 The Delegation was told of the Payments Industry and Police Joint Intelligence Unit (PIPJIU). The unit was established by merging the banking industry's own Fraud Intelligence Bureau with the DCPCU to form an enhanced joint industry and police intelligence unit with increased funding and a wider remit.

4.114 In parallel, the banking industry has developed a Fraud Intelligence Sharing System (FISS). FISS is a centralised intelligence data sharing system which identifies linkages across all types of banking fraud. Intelligence data held on FISS is managed by the PIPJIU and shared with DCPCU and other police forces.

4.115 The need for a national approach to financial fraud was noted in a number of discussions. Detective Inspector John Folan, Head of the DCPCU, told the Delegation that legislation was not required to develop the unit and that in the UK there is public support for private/public partnerships and sponsorships. Therefore, the partnership between law enforcement and the banking sector, including the provision and sharing of information, is widely accepted. Detective Inspector Folan noted that change is often driven by the private sector, as government is very slow to develop legislative and program responses.

4.116 The Delegation heard that potentially there is a range of issues surrounding the legality of information sharing between the private sector and law enforcement, however, these appear to have presented no barriers in the UK.

International partnerships

4.117 Mr John Coles, Head of International Delivery, SOCA, highlighted the significant expansion and globalisation of serious and organised crime. Consequently, the UK, like other jurisdictions, has developed a range of mechanisms to work with international partners.

4.118 SOCA has a network of international Liaison Officers (SLOs) located in some 59 locations. These officers work with host countries to share information, intelligence and, where approved, engage in joint taskforces and operations.

4.119 The Delegation heard about 'Intelligence Fusion Centres' (IFC) in a range of international locations, which provide a forum for international sharing of intelligence and resources, and provide technical training and assistance:

- Spain is the lead nation for the Marine Operations Analysis Centre which brings together seven nations to share intelligence on Class A drug shipments.
- France is the lead nation for an IFC in the Mediterranean with a focus on human smuggling.
- UK is the lead nation for an IFC in West Africa.

-
- USA has an IFC in Miami with a focus on drug trafficking.

4.120 The Delegation was told that currently no IFC is located in the Oceania region. It was suggested that there is a case for one to be established in this region and that Australia is well placed to progress this issue.

Harm reduction

4.121 Mr Bill Hughes, the Director General of SOCA told the Delegation that SOCA has developed a focus on harm reduction. This focus was established for several reasons.

4.122 Firstly, it is difficult to measure the effectiveness of law enforcement against serious and organised crime, and there are few meaningful performance indicators. A focus on harm and harm reduction is seen as a method which allows the performance of law enforcement to be measured.

4.123 Secondly, the law enforcement response to organised crime is shared over a number of agencies. The different focus and activities of these agencies have not readily allowed a coordinated response to serious organised crime. A harm reduction focus has allowed the various agencies to develop specific agency approaches to a shared target. Mr David Bolt, Executive Director Intelligence at SOCA, told the Delegation that agencies often tend to focus on areas which are known. A focus on harm reduction allows agencies to look outside these known areas of expertise and provides a common focus for multiple agencies.

4.124 Thirdly, a focus on harm reduction allows law enforcement to actively target serious and organised crime and to intervene before a crime is committed.

Financial fraud

4.125 The delegation heard that there has been significant growth in financial and the annual cost of fraud to the financial and retail industries. Mr Euan Stewart, Director Criminal Operations, HMRC, noted that many law enforcement approaches to fraud are 19th Century responses to 21st Century problems.

4.126 In 2007, total card fraud losses increased by 25% to £535 million (AU\$1.1 billion) and counterfeit card fraud increased by 46% to £144.3 million (AU\$298 million).³⁵ Phone, internet and mail order (card-not-present or CNP) fraud is also a significant issue in the UK and is estimated to have cost £290.5 million in 2007 (AU\$600 million), an increase of 37% on the previous year. An APACS report noted:

This crime most commonly involves the theft of genuine card details in the real world that are then used to make a purchase over the internet, by phone, or by mail order. The genuine cardholder may not be aware of this

35 Information source APACS website, <http://www.apacs.org.uk/index.html>, (accessed 11 June 2009).

fraud until they check their statement. It is the largest type of card fraud in the UK.

However, these losses should be seen in the context of huge increases in both the amount of people shopping online and over the phone, and the number of retailers offering telephone or online shopping. Since the year 2000, phone, internet and mail order fraud losses have risen by 298 per cent. Over the same time period, the total value of online shopping transactions alone increased by 871 per cent (up from £3.5 billion in 2000 to £34 billion in 2007). More than 30 million UK adults shop online.

The difficulty in countering this type of fraud lies in the fact that neither the card nor the cardholder is present when the transaction happens. This means that:

- Businesses accepting these transactions are unable to check the card's physical security features to determine whether it is genuine.
- Without a signature or a PIN there is less certainty that the customer is the genuine cardholder.³⁶

4.127 While there was a decline in the instance of domestic card fraud, there was a significant escalation in the number of international frauds, in particular from the USA, due to the increase in internet and card not present sales and the lower verification checking systems used in the US.

4.128 Ms Worobes from APACS told the Delegation that the magnetic strip technology, traditionally used on credit cards, is easy to corrupt. It no longer offers adequate protection and has been superseded.

4.129 UK banks and retailers have introduced a 'chip and PIN' system, which has significantly reduced the incidences of retail fraud. The government has facilitated this change, but it has been driven primarily by the banking sector. The Delegation was told that if a retailer adopts the 'chip and PIN' system then the bank will cover the value of fraud. However, if the retailer remains with the magnetic strip technology, the cost of the fraud is not covered by the bank. In this way the liability has been moved from the bank to the retailer. Ms Worobec noted that this shift in liability has educated retailers about the extent and cost of retail fraud.

4.130 The success of chip & PIN has meant that over the past three years 'losses on transactions on the UK high street' have reduced by 67% from £218.8 million (AU\$450 million) in 2004 to £73 million (AU\$151 million) in 2007.³⁷

36 APACS, *Fraud the Facts 2008*, http://www.cardwatch.org.uk/images/uploads/publications/Fraud%20the%20Facts%202008_links.pdf, p. 9. (accessed 11 June 2009).

37 APACS, <http://www.apacs.org.uk/index.html>, (accessed 11 June 2009).

Charter of Rights

4.131 In a number of meetings the Delegation heard that the UK's criminal legislative framework is incredibly complex and has, as a result of the *European Convention on Human Rights Act 1998*, become overtly bureaucratic. Detective Inspector John Folan, Head of the DCPCU, noted that it took thirteen hours to complete the paperwork required under the *Regulation of Investigation Powers Act 2000*, to request authority to undertake a surveillance investigation. While law enforcement acknowledged the need for appropriate civil protections, the current arrangements and human rights obligations are seen to impede their ability to undertake their role in an efficient and effective manner.

Serious organised crime and terrorism: the balance point

4.132 SOCA has estimated that serious and organised crime costs the UK approximately £21 billion (AU\$43 billion) annually. This figure equates to between seven and thirteen per cent of GDP. Yet public awareness of the cost and effect of serious organised crime is minimal in comparison to public knowledge of terrorism.



Members of the Delegation inspecting the Bomb Data Centre, Metropolitan Police, London.

4.133 The Delegation was told that £557 million (AU\$1.15 billion) has been invested in counter-terrorism and that in that area, national law enforcement connectivity was achieved very quickly.

4.134 Assistant Commissioner Jon Murphy, National Coordinator Serious and Organised Crime, Association of Chief Police Officers, told the Delegation that the

establishment of a law enforcement terrorist capability was a result of top-down, high level political drivers. In comparison, national responses to organised crime are driven from the bottom-up and there is not necessarily an appreciation of the scale and significance of the problem or the provision of resources to tackle it. Assistant Commissioner Murphy noted that serious and organised crime has been the 'Cinderella' of policing with police performance being measured against the high profile areas of community policing and terrorism.

4.135 The link, although tenuous, between serious crime and terrorism was made in a few meetings. The Delegation heard that while terrorism has a different motivation than serious organised crime, terrorist groups commit serious crime in order to fund terrorist activities. Mr Euan Stewart, Director of Criminal Intelligence, HMRC, told the Delegation that HMRC has seen the flow of money out of the UK to countries such as Pakistan. The Delegation also heard from a number of sources that UK petrol stations have become the targets of the Tamil Tigers, to illegally obtain funds which are then used to fund the terrorist activities of the Tamil Tigers in Sri Lanka.

4.136 Mr Stephen Webb and Mr Richard Rhodes from the UK Home Office identified that organised crime, over the last few years, has lost political and public ground to terrorism. Further, it was noted that the UK has no Minister or parliamentary committee specifically responsible for serious and organised crime.

4.137 Mr John Coles, Head of International Delivery, SOCA, told the Delegation that terrorism is about commanding public and political attention through one-off spectacular events. In contrast, serious and organised crime is about remaining undetected. However, the cost of criminal activities is significant. Mr Cole highlighted a financial scam in Canada which produced CAN\$35 million (AU\$39 million) in twelve months and noted that this was one of many financial scams being operated at the time.

Conclusions

4.138 The Delegation's discussions with UK agencies and individuals regarding legislative and administrative approaches to tackle serious organised crime were extremely useful.

4.139 A number of key issues and findings arising from the Delegation's discussions in the UK have relevance for Australia's consideration of arrangements to combat serious and organised crime. These include:

- (a) The important role that a national lead agency with responsibility for serious and organised crime, such as SOCA, plays in unifying the fight against serious and organised crime
- (b) The need for high-level political support to address serious and organised crime, and a reassessment of the threat of serious organised crime in relation to terrorism

- (c) The importance of developing a clear picture of the threat and extent of organised crime, such as:
 - the United Kingdom Threat Assessment of Serious Organised Crime, and
 - the mapping of organised crime
- (d) The need for strong proceeds of crime confiscation laws, with civil burdens of proof, removing the motive for criminal activity and preventing criminal assets from being used to commit further crimes
- (e) The need to support and resources multi-agency taskforces to tackle serious and organised crime
- (f) The need for national, regional and international intelligence sharing and coordination amongst law enforcement agencies, with appropriate mutual legal assistance arrangements to accommodate this

4.140 The Delegation appreciates the frank and informative discussions it had with UK agencies and law enforcement officers and officials.

CHAPTER 5

International arrangements to address serious and organised crime

5.1 The opportunity for Senators and Members of the Australian Federal Parliament to examine international approaches to tackling serious and organised crime first-hand was a valuable exercise.

5.2 The strongest impression that the Delegation formed as a result of its discussions with law enforcement officers in North America, Europe and the United Kingdom is the scale and destructive effects of serious and organised crime. The Delegation was surprised to learn that governments around the world are often not aware of the magnitude of this problem and are not well prepared for its impacts.

5.3 Mr Antonio Maria Costa, Director General of the United Nations Office on Drugs and Crime outlined his concerns regarding the global crime threat:

...in the firmament of our society the stars are now lined up in an adverse constellation that causes anxiety, even fear... globally, I believe we face a crime threat unprecedented in breadth and depth. The warning signs are everywhere:

- drug cartels are spreading violence in Central America, Mexico and the Caribbean. The whole of West Africa is under attack from narco-traffickers, that are buying economic assets as well as political power;
- collusion between insurgents and criminal groups threatens the stability of West Asia, the Andes and parts of Africa, fuelling the trade in smuggled weapons, the plunder of natural resources and piracy;
- kidnapping is rife from the Sahel to the Andes, while modern slavery (human trafficking) has spread throughout the world;
- in so many urban centres, in rich as much as in poor countries, authorities have lost control of the inner cities, to organized gangs and thugs;
- the web has been turned into a weapon of mass destruction, enabling cyber-crime, while terrorism - including cyber-terrorism - threatens vital infrastructure and state security.¹

5.4 While this finding is daunting, the Delegation was tasked with looking at international solutions and approaches to mitigate the effects of serious and organised crime. Despite the fact that each country the Delegation visited had its own unique

1 Mr Antonia Maria Costa, Director General, United Nations Office of Drugs and Crime, *The global crime threat – we must stop it*, 18th Session of the Commission on Crime Prevention and Criminal Justice, Vienna, 16 April 2009, <http://www.unodc.org/unodc/en/about-unodc/speeches/2009-16-04.html>, (accessed 16 June 2009).

political and social history, law enforcement structures and issues, and criminal milieu, the Delegation saw the convergence of a number of legislative and law enforcement approaches across North America, Europe and the UK.

Key findings of the Delegation

5.5 The previous chapters of this report set out in detail the key issues and findings arising from the Delegation's meetings in each country. This chapter brings those findings together to identify consistent themes, and legislative approaches identified as being effective in tackling serious and organised crime.

5.6 There were five key themes arising from the Delegation's discussions:

- The importance of 'following the money trail'.
- The need for information sharing and greater cooperation amongst law enforcement and other agencies, both within governments (e.g. between police and tax offices) and between governments (i.e. through multilateral and bilateral international agreements).
- The benefits of developing measures to prevent organised crime, rather than simply react to it.
- The critical role that political will plays in combating serious and organised crime.
- The need for governments to take a holistic approach to tackling organised crime, through a whole package of legislative and administrative measures.

Following the 'money trail'

5.7 In all of the jurisdictions that the Delegation visited, law enforcement strategies which target the business model and financial and material assets of organised crime were raised as a crucial strategy for disrupting organised criminal activity. The Delegation was told that by depriving individuals of illegally obtained assets, law enforcement is able to remove the major incentive for illegal and criminal activity.

5.8 Mr Raffaele Grassi, from the Italian National Police articulated this approach when he told the Delegation:

[Criminal] members are prepared to spend time in prison, but to take their assets is to really harm these individuals.²

2 Mr Raffaella Grassi, Director of Division I, Operational Service Central Anti-Crime Directorate, Rome, Italy, 20 April 2009.

5.9 In discussions with the Netherlands Police (KLPD), it was noted that there has been a fundamental shift in the way that law enforcement tackles organised crime in the Netherlands, and elsewhere, with the focus on the 'money trail'.

5.10 The Delegation was informed of two principal elements that are involved in an effective law enforcement approach to targeting criminal assets:

- First, it is imperative to develop strong laws to confiscate criminal assets and prevent them from being used to fund further crime.
- Second, law enforcement requires strong structures for financial reporting, so that they may obtain information and intelligence about criminal assets.

Proceeds of crime laws

5.11 In many of the jurisdictions visited, non-conviction-based, civil asset forfeiture laws are increasingly viewed as an effective tool for disrupting and dismantling serious and organised crime. In Canada, the merits of Ontario's civil forfeiture regime were highlighted.

5.12 In the US, the *Civil Asset Forfeiture Reform Act of 2000* - a civil non-conviction-based forfeiture regime under which the assets of persons under investigation for, being tried for, or convicted of, a large number of offences may be frozen or confiscated by the government - was also highlighted as an effective mechanism.

5.13 The Delegation heard of the effectiveness of the UK's approach of reversing the onus of proof for civil assets forfeiture proceedings regarding those who have led a 'criminal lifestyle'. The Delegation also discussed the ability of Italian courts to order that those who have transferred criminal assets offshore forfeit an equivalent amount to the state and for third party confiscation.

5.14 Overall, law enforcement approaches in this area that are based on a lower burden of proof to seize and confiscate the assets of criminal organisations, have been very effective.

5.15 The Delegation was told of a number of impediments to countries passing effective criminal assets forfeiture laws, including: the difficulties in civil law jurisdictions with introducing laws with a lower standard of proof; the problems that can be caused by charters of rights which allow judges to overturn legislation; and the problems that can arise when assets are transferred to another jurisdiction with which mutual assistance arrangements are not in place.

5.16 The Delegation heard that some countries with civil law jurisdictions have effectively adapted anti-terrorist legislation to tackle serious organised criminal groups.

Financial reporting

5.17 The Delegation also heard about a number of arrangements whereby law enforcement is able to monitor, and obtain intelligence about, the transfer and use of criminal assets.

5.18 Many of these arrangements included limits on large cash payments, and the collection by banks and financial services providers of personal data, such as the EU's model approach. In Italy, the Delegation heard that strong penalties have been attached to the failure of financial organisations to meet these reporting obligations.

5.19 The Delegation was also told about a number of preventative measures, such as UK organisations which monitor fraud, including CIFAS – a private, not-for-profit, fraud data sharing scheme - the Dedicated Cheque and Plastic Crime Unit and APACS, – the UK fraud prevention service. Additionally, the Delegation learned of ways in which technologies can be used to make financial transactions safer and thereby preventing organised fraud – such as chip and PIN technology.

Information and intelligence sharing

5.20 The Delegation found that information and intelligence sharing presents a significant challenge for enforcement agencies in all the countries visited. Many jurisdictions have large numbers of law enforcement agencies,³ and historically these agencies have not shared information or intelligence as a result of both cultural and legislative barriers.

5.21 The Delegation heard that information and intelligence sharing amongst different agencies is becoming increasingly important as organised crime becomes more sophisticated. Numerous jurisdictions are now using 'multi-agency' approaches, integrating financial investigators and other experts into law enforcement teams – such as SOCA.

5.22 In Canada, 'Integrated Justice Units' were flagged as a significant new approach which integrates the investigation and prosecution of criminal cases by having both police and prosecutors involved in cases from the outset. The Units allow prosecutors to be involved with police to ensure that the case and brief of evidence are collected and prepared in a manner which is compatible with the prosecution process.

5.23 The Delegation also learned of the increasing importance of intelligence sharing at a transnational level.

5.24 A key development internationally has been the establishment of a lead agency within a number of jurisdictions with a focus on serious and organised crime. These agencies, among other things, bring together other law enforcement agencies,

3 Canada has 380 law enforcement agencies; U.S. has approximately 1800 law enforcement agencies; U.K. has 57 different police forces.

share intelligence on serious organised crime, and develop national strategic assessments and approaches to tackling serious organised crime.

5.25 The Delegation also heard of the value and importance of multi-agency teams, international cooperation through organisations such as Europol and Interpol, bilateral treaties and 'Intelligence Fusion Centres'.

5.26 There are a number of impediments to transnational information sharing of which the Delegation became aware. These include: a lack of political will, particularly in weak and corrupt states; and the absence of mutual legal assistance arrangements between jurisdictions.

Measures to prevent organised crime

5.27 In both the UK and Canada the Delegation was told of the link between social exclusion, social disadvantage, and crime. While there has previously been an inclination for law enforcement agencies to focus solely on criminal acts, there is now a growing awareness of the need to balance this with consideration of social and economic issues.

5.28 The UNODC also highlighted significant global consequences for the growth and migration of criminal activity out of West African nations which are debilitated by acute poverty, corruption and weak governance and civil order.

5.29 Both the UK and Canada are using local government regulations to control street-gang membership, with the focus on removing lower level members from gang influence and mandating that these individuals attend diversionary programs.

5.30 Internationally, the Delegation found that civil society is recasting the debate as to how it will deal with those individuals who wish to operate in contravention of its rules. Countries such as the UK now consider harm reduction as a KPI of law enforcement. This approach casts law enforcement as a pro-active force and legitimises strategies to pro-actively prevent harm to individuals or society more generally. Individuals who have been convicted of a criminal offence under this new paradigm, have lost the right to 'uncontested space' in society.

5.31 The Delegation travelled to the UK specifically to examine the offender management approach developed for serious organised criminals, and in particular the effectiveness of Serious Crime Prevention Orders (SCPOs). SCPOs can be made when a person has been convicted of a serious offence and there are reasonable grounds to believe that the order would protect the public.

5.32 Similarly, the Delegation heard that Italian law enforcement agencies have available to them 'special surveillance measures' to restrict the movement and communications of mafia members. In Canada, Peace Bonds are being used successfully to restrict the movement and communications of offenders.

The importance of political will

5.33 The issue of political will was raised in a number of discussions as being critical to driving both domestic and international responses to organised crime.

5.34 In Italy, the Delegation was particularly impressed with the level of political commitment to combating serious and organised crime. The murder of Judge Giovanni Falcone and Judge Paola Borsellino in 1992, by the mafia, was the catalyst for change. In essence, these murders galvanized public opinion which in turn produced the political will and action needed to address both systemic corruption and organized crime.

5.35 The United Nations Interregional Crime and Justice Research Institute (UNICRI) and the United Nations Office on Drugs and Crime (UNODC) both discussed the lack of political will as being a significant impediment to the success of international collaboration on organised crime.

The need for holistic approaches to tackling organised crime

5.36 The Delegation was told by every agency with which it met about the magnitude of organised crime, and the numerous facets of government and every-day life that organised crime groups infiltrate. It became apparent to the Delegation that in order to deal with the problem of organised crime effectively, it is necessary to not only have strong criminal and proceeds of crime laws, but also effective means of dealing with numerous other issues related to, and caused by, organised crime groups.

5.37 Countries need to take a holistic view to the problem, and develop extensive legislative and administrative packages to prevent and punish all aspects of organised criminal involvement in society. This includes: effective measures to prevent corruption; strong witness protection programs; appropriate investigative powers for law enforcement that keep up to date with developing technologies; and ensuring that other aspects of the legal system are not causing unnecessary impediments to the ability of law enforcement to combat organised crime.

Corruption

5.38 All jurisdictions highlighted the growing potential for, and risk to, civil society of corruption, and the significance of corruption in serious and organised crime. The Delegation's meeting with the UNODC highlighted the importance of police and public sector integrity and noted that in many failing or corrupt states this is an area which is neglected.

5.39 In the US, the Delegation heard that organised crime protects its business through violence, corruption or both. It was suggested that in the US, established criminal groups are politically well-connected and that as the criminal enterprise becomes more sophisticated it will target individuals in high public office.

5.40 Similarly, the effects of mafia corruption are so great that Italians refer to it as the 'third power' in the Italian State.

5.41 The Delegation heard from the UNODC of the importance of developing mechanisms to prevent and deal with corruption in government, politics, public office, and law enforcement, in fighting organised crime.

Witness protection

5.42 In a number of jurisdictions the Delegation learnt of the importance of strong witness protection programs. The Delegation heard that while witness protection appears not to be universally popular with law enforcement officers, it is a critical tool, necessary to fight organised crime.

5.43 In Italy, the Delegation heard that witness protection programs were, and continue to be, critical in the fight against the mafia.

5.44 The Delegation heard from UNICRI of the importance of these programs for individuals, particularly women and children, who are the victims of the global people trafficking trade.

Technology and telecommunications access

5.45 In a number of the Delegation's discussions the need for law enforcement to be able to intercept telecommunications in order to conduct electronic surveillance was raised, as were the challenges that the development of technology presents to law enforcement.

5.46 In Canada, the Delegation was told that developments in telecommunications often occur without the provision of 'backdoor access' for law enforcement, so that law enforcement is unable to intercept some of the newer telecommunications technologies. Companies developing these technologies in Canada are no longer under a legal obligation to create an ability for law enforcement to intercept new telecommunications.

5.47 However, this was not the case in the US where officers from the Department of Justice told the Delegation that before any telecommunications provider can roll-out services they must provide 'backdoor access' for law enforcement.

5.48 The *Communications Assistance for Law Enforcement Act 1994 (CALEA)* is the US statute which provides for this. CALEA is intended to preserve the ability of law enforcement officials to conduct electronic surveillance effectively and efficiently, despite the deployment of new digital technologies and wireless services that have altered the character of electronic surveillance. CALEA requires telecommunications carriers to modify their equipment, facilities, and services,

wherever reasonably achievable, to ensure that they are able to comply with authorized electronic surveillance actions.⁴

5.49 The Delegation was told that Italy also has very strong laws to tackle organised crime regarding telecommunications interception. In Italy, law enforcement has the ability to obtain 'administrative interception' orders when they suspect an individual is involved in the mafia. The orders enable authorities to intercept telecommunications and monitor the suspect, without a judicial order. However, the information obtained cannot be used in court. In order to obtain evidence for use in court proceedings, Italian police must obtain another 'judicial interception' order – which can be based on the evidence obtained from the administrative order.

Charters of Rights

5.50 The Delegation heard from a number of different agencies about the unintended consequences for law enforcement of a charter of rights. The Delegation was told that Canada's *Charter of Rights and Freedoms* has become a mechanism used by those facing criminal trial to stall the judicial process. In the UK, the Delegation was told that as a result of *European Convention on Human Rights Act 1998*, law enforcement has become increasingly bureaucratic.

5.51 Similarly, officers from the Organised Crime Group Unit at Europol noted that the freedom of association protections in the Netherlands have had the effect of stalling the judicial process in that country.

5.52 While law enforcement agencies acknowledge the need for appropriate civil protections, some country's arrangements for protecting human rights are seen to impede the ability of law enforcement to undertake their role in an efficient and effective manner.

5.53 These issues gave the Delegation an appreciation of the wide range of legislation that impacts on the fight against serious and organised crime.

Concluding remarks

5.54 This Delegation report has sought to document the key findings of the many meetings held with experts and law enforcement practitioners from North America, Europe, and the United Kingdom. The key findings, outlined above, all have relevance for Australia's consideration of legislative and administrative arrangements to combat serious and organised crime.

5.55 This report does not make specific recommendations to any of its findings. Rather these findings will inform and form part of the larger report of the

4 Patricia Moloney Figliola, Congressional Research Service, *Digital Surveillance: The Communication Assistance for Law Enforcement Act*, <http://www.fas.org/sgp/crs/intel/RL30677.pdf> (accessed 2 June 2009).

Parliamentary Joint Committee on the Australian Crime Commission for its inquiry into the legislative arrangements to outlaw serious and organised crime groups.

5.56 While the Delegation formed many lasting impressions of the problems and solutions, Mr Costa, Director General of UNODC best articulated a way forward:

In my view, efforts to fight organized crime must become more operational. While drug controlled deliveries are common practice, governments have found it more difficult to work together against mafia cartels - and even more difficult to investigate and prosecute jointly terrorists. I urge you to engage in mutual legal assistance on the basis of all UN anti-crime instruments, to extradite, prosecute and convict criminals.

...The political will of states is mightier than the greed and fire power of criminal groups. Working together does not mean surrendering sovereignty, it means defending it. So let us enforce the rule of law where uncivil society prevails.⁵

5 Mr Antonia Maria Costa, Director General, United Nations Office of Drugs and Crime, *The global crime threat – we must stop it*, 18th Session of the Commission on Crime Prevention and Criminal Justice, Vienna, 16 April 2009, <http://www.unodc.org/unodc/en/about-unodc/speeches/2009-16-04.html>, (accessed 16 June 2009).

APPENDIX A

Inquiry into the legislative arrangements to outlaw serious and organised crime groups

Terms of Reference

Pursuant to the Committee's duties set out in paragraph 55(1)(b) of the *Australian Crime Commission Act 2002*,

(b) to report to both Houses of the Parliament, with such comments as it thinks fit, upon any matter appertaining to the ACC or connected with the performance of its functions to which, in the opinion of the Committee, the attention of the Parliament should be directed;

the committee will examine the effectiveness of legislative efforts to disrupt and dismantle serious and organised crime groups and associations with these groups, with particular reference to:

- (a) international legislative arrangements developed to outlaw serious and organised crime groups and association to those groups, and the effectiveness of these arrangements;
- (b) the need in Australia to have legislation to outlaw specific groups known to undertake criminal activities, and membership of and association with those groups;
- (c) Australian legislative arrangements developed to target consorting for criminal activity and to outlaw serious and organised crime groups, and membership of and association with those groups, and the effectiveness of these arrangements;
- (d) the impact and consequences of legislative attempts to outlaw serious and organised crime groups, and membership of and association with these groups on:
 - i) society
 - ii) criminal groups and their networks
 - iii) law enforcement agencies; and
 - iv) the judicial/legal system
- (e) an assessment of how legislation which outlaws criminal groups and membership of and association with these groups might affect the functions and performance of the ACC.

APPENDIX B

Delegation Program

SUNDAY 12 APRIL 2009 SYDNEY to OTTAWA

- 1305 Depart Sydney Airport Terminal 1 for Los Angeles International Airport (LAX) on Qantas flight
- 0945 Arrive LAX Terminal B
- 1206 Depart LAX Terminal 7 on United Airlines flight
- 1854 Depart O'Hare Airport Terminal 2 for Ottawa on United Airlines flight UA5942
- 2149 Arrive Ottawa Airport

MONDAY 13 APRIL 2009 OTTAWA

- 1215 Depart on foot for Byward Market, 54 York Street, Ottawa
- 1230 Meeting with Australian High Commission in Canada staff
- 1400 Tour of Parliament

TUESDAY 14 APRIL 2009 OTTAWA

- 0910 Depart by car for RCMP Headquarters, 1200 Vanier Parkway, Ottawa
- 0930 Welcome remarks by Deputy Commissioner or Assistant Commissioner
- 0945 Setting the Stage: Organised Crime in Canada
- 1030 National Threat Assessment on Organised Crime
- 1330 RCMP Response to Serious and Organised Crime
- 1445 Ontario Provincial Police, Canadian Association of Chiefs of Police, and the National Integrated Response to Organised Crime presented by Deputy Commissioner Vince Hawkes, Ontario Provincial Police
- 1615 Round table discussion with RCMP, Ontario Provincial Police and Criminal Intelligence Service Canada specifically addressing key themes and questions.
- 1645 Closing remarks by Deputy Commissioner or Assistant Commissioner
- 1830 Reception hosted by Mr Justin Brown, Australian High Commissioner to Canada

WEDNESDAY 15 APRIL 2009 OTTAWA

- 0830 Depart by car for RCMP Musical Ride and Stables
- 0855 Arrive RCMP Rockcliffe Stables, Canadian Police College
- 0900 Tour of RCMP Musical Ride and Stables with Bruce Willens, Commanding Officer
- 1015 Arrive at RCMP Headquarters, meeting with RCMP Commissioner and senior officers
- 1330 Depart by car for Department of Justice Canada
- 1400 Briefing by Department of Justice on Canadian organised crime legislation and its implementation.

THURSDAY 16 APRIL 2009 OTTAWA to ROME via WASHINGTON

- 0500 Depart hotel by car for Ottawa Airport
- 0520 Arrive Ottawa Airport and check in for United Airlines flight UA8486 to Washington
- 0650 Depart Ottawa Airport on United Airlines flight UA8486 for Washington

THURSDAY 16 APRIL 2009 WASHINGTON

- 0819 Arrive Ronald Reagan National Airport Washington Terminal B
- 0840 Depart by car for US Department of Justice
- 0930 Overview of US International Organised Crime Strategy
- 1040 Depart on foot for FBI Headquarters
- 1050 Arrive at FBI Headquarters
- 1100 FBI Criminal Investigative Division on Asian, Eurasian (including Russian) Organised Crime, and the Outlaw Motor Cycle Gang Program
- 1410 Depart by car for Australian Embassy
- 1530 Arrive at the Australian Embassy
- 1545 Meeting with Mr Dennis J Richardson AO, Australian Ambassador to the United States of America
- 1515 Depart Australian Embassy by car for Dulles International Airport
- 1715 Arrive Washington Dulles International Airport and check in for British Airways flight BA216 to London
- 1900 Depart Washington Airport for London on British Airways flight BA216

FRIDAY 17 APRIL 2009 WASHINGTON to ROME

- 0915 Depart London Heathrow Airport Terminal 5 on British Airways flight BA548 for Rome
- 1240 Arrive Fiumicino Airport Rome Terminal C
- Met by Ms Amanda Vanstone, Ambassador to Italy and F/A Mark Dokmanovic, SLO
 Belgrade
- 1440 Depart hotel by car for the Australian Embassy Rome
- 1500 Meeting with Ms Kristiina Kangaspunta, Executive Officer, Applied Research Program, the
 United Nations Interregional Crime & Justice Research Institute (UNICRI)
- 1900 Met in the foyer by F/A Dokmanovic
- 2000 Dinner hosted by Ambassador Vanstone

SATURDAY 18 APRIL 2009 ROME

- 0930 Meeting with the Central Directorate for Anti-Drug Operations (DCSA)
- 1240 Depart by car for Via Mario de' Fiori, 34 (Piazza di Spagna)
- 1950 Met in the foyer by F/A Dokmanovic and Ms Lee Holloway, Second Secretary, Australian
 Embassy Rome

SUNDAY 19 APRIL 2009 ROME

- 0815 Met in the foyer by HE Mr Tim Fischer, Australian Ambassador to the Holy See, F/A
 Dokmanovic and Ms Holloway
- 1100 Arrive Tivoli
- 1500 Depart Tivoli - short visit to Basilica of St John Lateran

MONDAY 20 APRIL 2009 ROME

- 0800 Depart hotel by car for Via Torre di Mezzavia, 9/121, 00173 Rome
- 0900 Meeting with Direzione Investigativa Antimafia (DIA), the Criminal Police Central
 Directorate, and the Anticrime Central Directorate.
- 1500 Meeting with Guardia Di Finanza (GdF)

TUESDAY 21 APRIL 2009 ROME to VIENNA

- 1030 Depart Fiumicino Airport Terminal B for Vienna on Austrian Airlines flight OS506
- 1220 Met by Mr Peter Shannon, Australian Ambassador to Austria, and Mr Simon Mamouny,
 Third Secretary DFAT
- 1500 Meetings with Austrian Interior Ministry
- 1800 Reception hosted by Ambassador Shannon

WEDNESDAY 22 APRIL 2009 VIENNA

- 0900 Depart hotel by car for Vienna International Centre (UN)
- 0930 Meeting with Mr Antonia Maria Costa, Executive Director, United Nations Office on Drugs and Crime
- 1015 Meeting with Organized Crime and Criminal Justice Section – UNODC (Room E1484)
- 1100 Meeting with Governance, Human Security and Rule of Law Section – UNODC
- 1200 Meeting with Division for Operations, UNODC (TBC)
- 1500 Meeting with Policy Analysis And Public Affairs Division

THURSDAY 23 APRIL 2009 VIENNA to LONDON

- 0900 Meeting with Ambassador Shannon in the hotel lobby
- 1015 Arrive Vienna Airport and check in for British Airways flight BA697 to London
- 1145 Depart Vienna for London on British Airways flight BA697
- 1310 Arrive London Heathrow Airport Terminal 3

FRIDAY 24 APRIL 2009 LONDON

- 1000 Meeting with, Mr John Dauth, LVO, High Commissioner to the United Kingdom
- 1100 Meeting with Ms Katy Worobec, Head of Fraud, ACPAS.

SATURDAY 25 APRIL 2009 LONDON

- 0500 Attend ANZAC Day Dawn Service
- 0600 Attend Gunfire Breakfast
- 1100 Attend Wreath Laying Service
- 1115 Depart for Westminster Abbey
- 1200 Attend Service of Commemoration and Thanksgiving to mark ANZAC Day

SUNDAY 26 APRIL 2009 LONDON to THE HAGUE

- 1057 Depart St Pancras on Eurostar 9126 for Brussels
- 1403 Arrive Brussels, Depart Brussels on train service Inter City 9237 for The Hague
- 1725 Arrive The Hague – Holland Spoor Station

MONDAY 27 APRIL 2009 THE HAGUE

- 0900 Meeting with Ms Lydia Morton, Ambassador to Netherlands

-
- 0945 Depart Australian Embassy for Europol accompanied by F/A Bodel and F/A Ray Imbriano, AFP Liaison Officer at Europol
- 1000 Arrival and welcome by Dr Laszlo Salgo, Ph.D, Assistant Director of the Serious Crime Department Europol
- 1015 Overview on the role and framework of Europol and the Serious Crime Department by Dr Salgo
- 1045 Briefing by Ms Mari Hamalainen, Strategic Analyst, First Officer Europol, on Organised Crime Threat Assessment
- 1140 Briefing by Mr Morbee on Analytical Work File (AWF) Monitor
- 1230 Working lunch at the Red Room with Dr Salgo; Mr Robert Hauschild, Head, Drugs Unit, Europol; and Mr Van Heuckelom
- 1400 Briefing by Mr Hauschild on the Drugs Unit (SC2)
- 1430 Visit to the Drugs Unit Lab (SC2) with Mr Dudek
- 1500 Briefing by Mr Van Crombrugge on analysis work at Europol (SC7)
- 1830 Dinner hosted by Ambassador Morton

TUESDAY 28 APRIL 2009 THE HAGUE

- 0945 Met in foyer by Ambassador Morton and F/A Bodel
- 1000 Meeting with the Parliamentary Committee for Justice and the Parliamentary Committee for Ministry of Interior and Kingdom Relations
- 1330 Depart for Headquarters of International Police Services
- 1400 Meeting at the National Police Services Agency

WEDNESDAY 29 APRIL 2009 THE HAGUE to LONDON

- 1300 Arrive Amsterdam Airport and check in for British Airways flight BA435 to London
- 1455 Depart Amsterdam airport on British Airways flight BA435 to London Heathrow Airport

WEDNESDAY 29 APRIL 2009 LONDON

- 1510 Arrive London Heathrow Airport Terminal 5
- Depart by car for the Australian High Commission, Australia House (Bruce Rooms)
- 1630 Meeting with Mr Murphy, Organised Crime, Partnership Board

THURSDAY 30 APRIL 2009 LONDON

- 1200 Working lunch hosted by Assistant Commissioner John Yates, Specialist Crime Directorate, Metropolitan Police Service (MPS)

Depart for the House of Commons, Westminster

1400 Meeting with The Rt Hon Keith Vaz, Chairman, and Ms Elizabeth Flood, Secretary, UK Home Affairs Committee

1530 Meeting with Mr Wayne Bath, CIFAS

FRIDAY 1 MAY 2009 LONDON

Depart by car for the Serious Organised Crime Agency (SOCA)

1000 Welcome by Mr Bill Hughes, Director General, SOCA

1030 Briefing on the nature and extent of organised crime in the UK by Mr David Bolt, Executive Director Intelligence

1100 Briefing on immigration and lifetime management of offenders/industry exchange

1130 Briefing on key legislative instruments in targeting domestic organised crime by Mr Ian Cruyton, Deputy Director Proceeds of Crime

1200 Overview of SOCA's international work against organised crime by Mr John Coles

1400 Meeting at UK Home Office

1530 Meeting with the UK Border Agency (UKBA) and Her Majesty's Revenue and Customs (HMRC)

SATURDAY 2 MAY 2009 LONDON

Depart by car for Heathrow Airport

Arrive London Heathrow Airport and check in for Qantas flight QF32 to Sydney

Depart Heathrow Airport Terminal 4 for Sydney on Qantas flight QF32

SUNDAY 3 MAY 2009

Arrive Sydney Kingsford Smith Airport Terminal 1

End of official visit

APPENDIX C

Agencies/officers with whom the Delegation held meetings

Canada

Royal Canadian Mounted Police

Mr William Elliot - Commissioner

Mr Bill Sweeney - Senior Deputy Commissioner

Mr Raf Souccar - Deputy Commissioner

Mr Tim Killan - Deputy Commissioner

Mr Pierre Perron – Director General, Major & Organised Criminal Intelligence

Mr Robert Fahlman - Director General

Mr Bill Malone – Superintendent, Federal Operations & International Organised Crime Branch

Mr Bruce Willens - Superintendent

Mr Craig Kennedy - Corporal

Criminal Intelligence Service

Mr William Garrick – Deputy Director General

Ms Deborah Counsel – Unit Manager

Department of Justice Canada

Ms Donna Miller - Associate Deputy Minister of Justice

Mr William Bartlett – Senior Counsel, Department of Justice

Ms Michelle Douglas – Director, the International Relations Group

Ms Paula Clarke – Counsel, Department of Justice

Public Prosecution Service of Canada

Mr Don Beardall – Senior Counsel, Public Prosecutions Service of Canada

Mr Loic Oliver – Counsel, Ministerial and External Relations

Ontario Provincial Police

Mr Vince Hawkes – Deputy Commissioner (Investigations and Organised Crime)

United States

United States Department of Justice

Mr Bruce Swartz – Deputy Assistant Attorney General, Criminal Division

Ms Jennifer Shasky Calvery – Senior Counsel, Office of the Deputy Attorney General

Mr Adam Cohen – Director, National gang targeting

Mr Tom Padden – Deputy Director, Organised Crime Drug Enforcement Task Forces

Mr Bruce Ohr – Chief – Organised Crime and Racketeering Section

Mr Richard Weber – Chief, Asset Forfeiture & Money Laundering Section

Federal Bureau of Investigation

Mr Ken Kaiser – Assistant Director, Criminal Investigative Division

Mr Daniel Roberts – Deputy Assistant Director, Criminal Investigative Division

Mr Matt Herron – Section Chief, Criminal Investigative Division

Mr Herb Brown – Section Chief, Gang Unit
Mr Matt Desarano – Unit Chief, Gang Unit
Mr Barry Braun – Unit Chief, Eurasian Organised Crime
Mr Dean Phillips – Unit Chief, Asian Organised Crime

Italy

United Nations Interregional Crime & Justice Institute

Ms Kristiina Kangaspunta – Executive Officer, Applied Research Program

Guardia di Finanza

Lieutenant General Cosimo d'Arrigo – Commanding General
Mr Renato Maria Russo – Brigadier General
Mr Massimo Grillo – Colonel
Mr Giuseppe Lopez – Captain
Colonel Carrado Pillitteri – Head of International Cooperation Economy Office
Major Paola Frascarello - International Cooperation Economy Office

Central Directorate for Anti- Drug Operations

Dr Sebastian Vitali – Dirigente Superiore of the Polizia di Stato, Head of III Division
Mr Luigi Dell'abate – Brigadier General of the Guardia di Finanza, Head of the I Service
Mr Giuseppe Eufemia – Primo Dirigente of the Polizia di Stato, Director of II Division
Mr Giuseppe Finocchiaro – Lt Colonel of Carabinieri, Head of International Affairs Section
Mr Renato Peres – Vice Questore Aggiunto of State Police, International Affairs Section
Mr Federico Quatrini – Captain of the Carabinieri, Analysis Section
Mrs Maria Luce Del Vecchio - Interpreter

Direzione Investigativa Antimafia

Major General Antonio Girone – D.I.A. Director
General Pasquale Napolitano – Head, International Relations with Investigative Purposes
Colonel Roberto Ripandelli – Head of 1st Division 3rd Branch, International Relations
Lieutenant Colonel Vito Mazzilli – Senior Officer, International Relations
Lieutenant Colonel Alessandro Cherchi – Senior Officer, International Relations
Lieutenant Colonel Alberto Offerente – Senior Officer, Preventative Investigations
Lieutenant Colonel Adriano Pirozzi – Senior Officer, Preventative Investigations
Lieutenant Colonel Omar Pace – Senior Officer, Criminal Investigations
Dr Isabella Manassei – Interpreter

Criminal Police Central Directorate and the Anticrime Central Directorate

Mr Antonello Sessa – Brigadier General of the Carabinieri, Director of International Police
Mr Enzo Calabria – Dirigente Superiore, Italian National Police, Director Criminal Analysis
Mr Raffaele Grassi - Dirigente of Italian National Police, Director of Division I
Mr Gennaro Capoluongo - Dirigente of Italian National Police, Director of Division II
Mr Virgilio Giusti – Colonel of the Guardia di Finanza, Director of Division III
Mr Giuseppe Lanzillotti – Colonel of the Carabinieri, Director of SIRENE
Mr Antonio Colacicco – Colonel of the Carabinieri, Director of Europol

Austria

United Nations Office on Drugs and Crime

Mr Antonio Maria Costa – Director General/Executive Director
 Mr Ric Power – Anti- Money Laundering Advisor
 Mr Johan Weijers – Chief, Co-financing & Partnership Section
 Ms Valerie Lebaux – Chief of the Organised Crime and Criminal Justice Section
 Mr Bernard Leroy – Senior Legal Inter-regional Advisor, Treaty & Legal Affairs Branch
 Ms Loide Lungameni – Legal Officer, Organised Crime & Criminal Justice Section
 Ms Gillian Murray – Crime Prevention & Criminal Justice Officer
 Ms Candice Welsh – Drug Control & Crime Prevention Officer
 Ms Sandra Valle – Senior Interregional Advisor
 Mr Pierre Lapaque – Chief, Organised Crime & Anti-Money Laundering Unit
 Mr Ian Munro – Program Officer, Anti-Money Laundering Unit
 Ms Daphine Schantz – Anti-Money Laundering Adviser
 Mr Bernard Frahi – Deputy Director, Division for Operations
 Mr Frances Maertens – Director, Division for Operations
 Mr Sandeep Chawla – Director, Division for Policy Analysis & Public Affairs
 Mr John Sadage – Chief, Treaty & Legal Assistance Branch
 Mr Dimitri Vlassis – Chief, Corruption & Economic Crime Section
 Ms Brigitee Strobel-Shaw – Crime Prevention & Criminal Justice Officer
 Ms Valerie Lebaux – Chief, Organised Crime & Criminal Justice Section
 Mr Peter Vallely – Senior Technical Advisor, Precursors Nations Office
 Mr Justice Tetty – Chief, Laboratory & Scientific Section
 Mr Jeremy Douglas – Expert/Manager, Laboratory and Scientific Section

Federal Police of Vienna

Dr Werner Tramnicek – Chief, Organisation, Controlling, Internal Audit
 Mag. Joachim Pirker – Detective

United Kingdom

Serious Organised Crime Agency

Mr Bill Hughes – Director General
 Mr David Bolt – Executive Director Intelligence
 Ms Jane Attwood – Deputy Director, Prevention & Alerts
 Mr Ken Pandolfi – Head of Immigration & Lifetime Management
 Mr Chris Humphrey – Head of Industry
 Mr Ian Cruxton – Deputy Director, Proceeds of Crime
 Mr John Coles – Head of International Delivery
 Mr Andy Lewis – Head of Civil Recovery and Tax Proceeds of Crime Department

Metropolitan Police

Mr John Yates QPM – Assistant Commissioner, Specialised Crime Directorate
 Mr Stuart Osborne – Commander, National Co-ordinator of Terrorist Investigations
 Mr Andy Meneely – Counter Terrorism Command

UK Border Agency

Mr Martin Peach CBE – Head of Intelligence
 Mr Kashif Chaudry – Deputy Director, International Liaison & Intelligence Directorate

Mr Tony Walker – Border Director, National Intelligence
Mr John Ferman – Director, Intelligence Directorate
Mr Chris Foster – Metropolitan Police

HM Revenue & Customs

Mr Mike Eland – Director General, Enforcement & Compliance
Mr Euan Stewart – Director Operations
Mr Paul Golightly – Head of Commercial Projects
Mr Gordon Miller – Head of Criminal Intelligence Group UK
Mr David Humphries – Deputy Director, Central Compliance

UK Home Office

Mr Stephen Webb – Acting Director of Policy and Operations
Mr Richard Rhodes – Organised and Financial Crime Unit
Mr Martin Peach CBE – Head of Intelligence
Mr Kashif Chaudry – Deputy Director, International Liaison & Intelligence Directorate
Mr Tony Walker – Director, Intelligence and National Operations

Association of Chief Police Officers

Mr Jon Murphy QPM - National Coordinator Serious and Organised Crime

British Transport Police Federation

Mr Roger Randall – General Secretary

CIFAS

Ms Anne Sheedy – Head of Operations
Mr David Lennox – Head of Policy & Projects
Mr Wayne Bath – Fraud Investigations & Police Liaison

Association for Payment Clearing Services (ACPAS)

Ms Katy Worobec – Head of Fraud
Mr Andrew Fone – Senior Fraud Manager

Dedicated Cheque & Plastics Crime Unit

Mr John Folan - Detective Inspector
Mr Graham Goodwin – Detective Inspector

Netherlands

Europol

Dr Laszlo Salgo Ph.D – Assistant Director, Serious Crime Department
Mr Robert Hauschild – Head of Drugs Unit, Serious Crime Department
Ms Mari Hämäläinen – Analysis Unit, Serious crime Department
Mr Mark Morbée – Organised Crime Group Unit, Serious Crime Department
Mr Carlo Van Heuckelom – Head of the Financial & Property Crime Unit
Mr Peter Van Crombrugge – Analysis Unit, Serious Crime Department
Mr Alfredo Garcia Miravete – Head of Organised Crime Groups Unit

Joint Standing Committee for Justice (CDA) The Dutch Parliament

Ms Marleen de Pater-van der Meer MP- Christian Democrats

Ms Cisca Joldersma MP – Christian Democrats

Mr Raymond De Roon MP – Party for Freedom

Ms Dennis Nava – Committee Secretary

Netherlands Police Agency

Mr Joop Siemers EMPM - Supervisor programs and postings abroad

Mrs Hennie Kusters – Head programs and postings abroad


Mr Jan Boersma – Head of Crime Investigation

National Public Prosecutor

Mr Cees Van Spierenburg – Team Manager, National Public Prosecutor

APPENDIX D


UNICRI's power point – work against Transnational Threats



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***UNICRI's work against
Transnational Threats***

Kristiina Kangaspunta
Parliamentary Joint Committee on the
Australian Crime Commission Visit
Rome, 17 April 2009



UNICRI

UNICRI

Established in 1968


**to assist the International community
in the field of crime prevention and
criminal justice**



UNICRI

UNICRI: its mission

- **Advance understanding of crime-related problems**
- **Foster just and efficient criminal justice systems**
- **Support the respect of international instruments and other standards**
- **Facilitate international law enforcement cooperation and judicial assistance**



UNICRI

UNICRI: its approach

- **Dynamic, fresh and action-oriented analysis and technical cooperation**
- **Responding to the needs**
- **Promoting innovation**



UNICRI

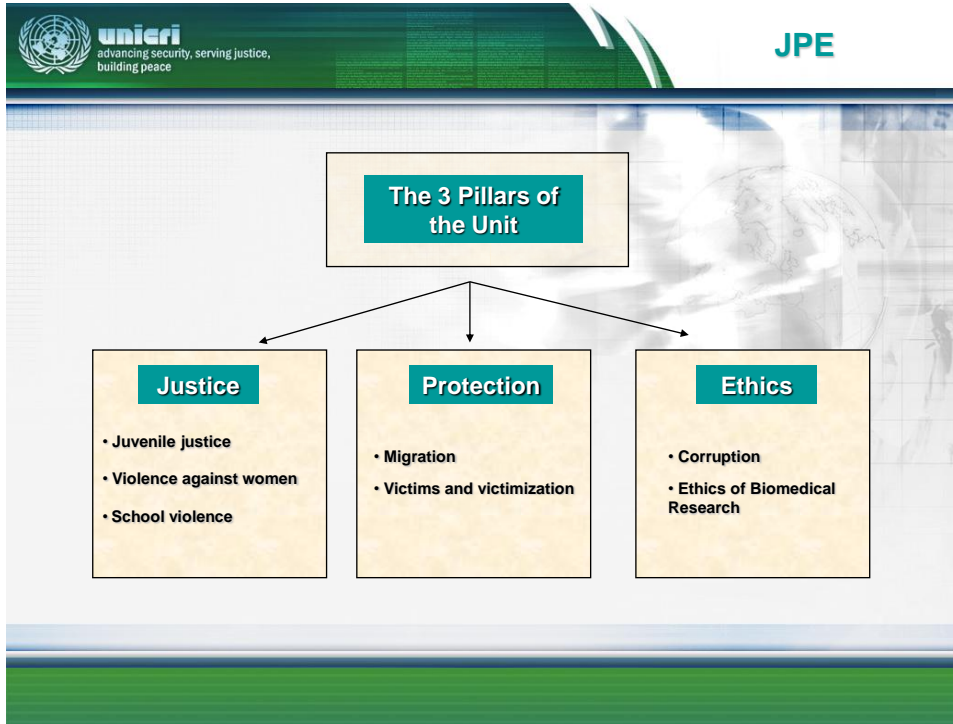
UNICRI: fields of action

- **Justice, Protection and Ethics**
- **Emerging Crimes and Counter Human Trafficking**
- **Security Governance / Counter-Terrorism**
- **Training and Advanced Education**



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Justice, Protection and Ethics



Security Governance
Counter-Terrorism
LABORATORY

we test ideas

The bottom section features a large background image of a water droplet with ripples. On the left, there is a grid of small images depicting various security and justice-related activities. The UNIERI logo is in the top left, and the "LABORATORY" logo and slogan "we test ideas" are at the bottom.



Non Traditional Fields

Major Events Security


- Ongoing**
IPO
International Permanent Observatory on Major Events Security
- Ongoing**
EU-SEC I
Coordinating National Research Programmes and Policies on Security at Major Events
- Ongoing**
IPO Americas
The first regional network of National Focal Points on Major Events

Private-Public Partnership

- Ongoing**
CTITF Soft Targets
United Nations Counter-Terrorism Implementation Task Force
- Project Idea**
Critical Infrastructures

Tech and Preventive Policy Urban Security

- Project Idea**
Crimewatchout.org
- Project Idea**
Free Zone
- Starting soon**
M.I.T. UNICRI Boston Desk



Emerging Crimes and Counter Human Trafficking

 **ECCHT**

Trafficking in Women and Adolescents from Nigeria to Italy

 **Countering Organized Crime and Corruption by Strengthening the Rule of Law in the Former Yugoslavia**


Projects on Counterfeiting

Projects on Cybercrime

Measures to Prevent and Combat Contemporary Maritime Piracy

Environmental Crime





Training and Advanced Education



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TAE

- **LL.M. in International Organizations, International Criminal Law and Crime Prevention**
- **Human Rights Capacity Building for the Government of Egypt – study tours**
- **Migration – Challenges and Opportunities for Europe, Turin International Summer School**
- **Strengthening Legal Education and Capacity Building in the Lao People's Democratic Republic**



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Examples



**Normative Framework
Organized Crime**

United Nations Convention against Transnational Organized Crime and its Protocols

Status (14 April 2009)

United Nations Convention against Transnational Organized Crime

Entry into force: 29 September 2003

Signatories: 147


Parties: 147

**Protocol to Prevent, Suppress and Punish Trafficking in Persons,
Especially Women and Children, supplementing the United Nations
Convention against Transnational Organized Crime**

Entry into force: 25 December 2003

Signatories: 117

Parties: 124



**Normative Framework
Organized Crime**

**Protocol against the Smuggling of Migrants by Land, Sea and Air,
supplementing the United Nations Convention against Transnational
Organized Crime**

Entry into force: 28 January 2004

Signatories: 112

Parties: 116

**Protocol against the Illicit Manufacturing of and Trafficking in
Firearms, Their Parts and Components and Ammunition,
supplementing the United Nations Convention against Transnational
Organized Crime**

Entry into force: 3 July 2005

Signatories: 52

Parties: 77



**Normative Framework
Organized Crime**

United Nations Convention against Transnational Organized Crime and its Protocols

Implementation: Example on Trafficking in Persons


- **Around 20 % of UN Member States do not have a specific offence on trafficking in persons in their legislation (as of November 2008)**
- **Around 45 % of UN Member States adopted an offence of trafficking in persons for the first time during the period 2003-2008**
- **After 2003 many of the 35% of countries with long-standing anti-human trafficking provisions amended their criminal codes to include more forms of trafficking**
- **40 countries have established a special antihuman trafficking police unit or a similar body that was actively functioning in 2008**
- **76 countries adopted a specific national plan of action on trafficking in persons prior to the end of 2008**



**UNICRI Analysis on
Counterfeiting**

The use of legitimate business in organized crime activities Example on counterfeiting

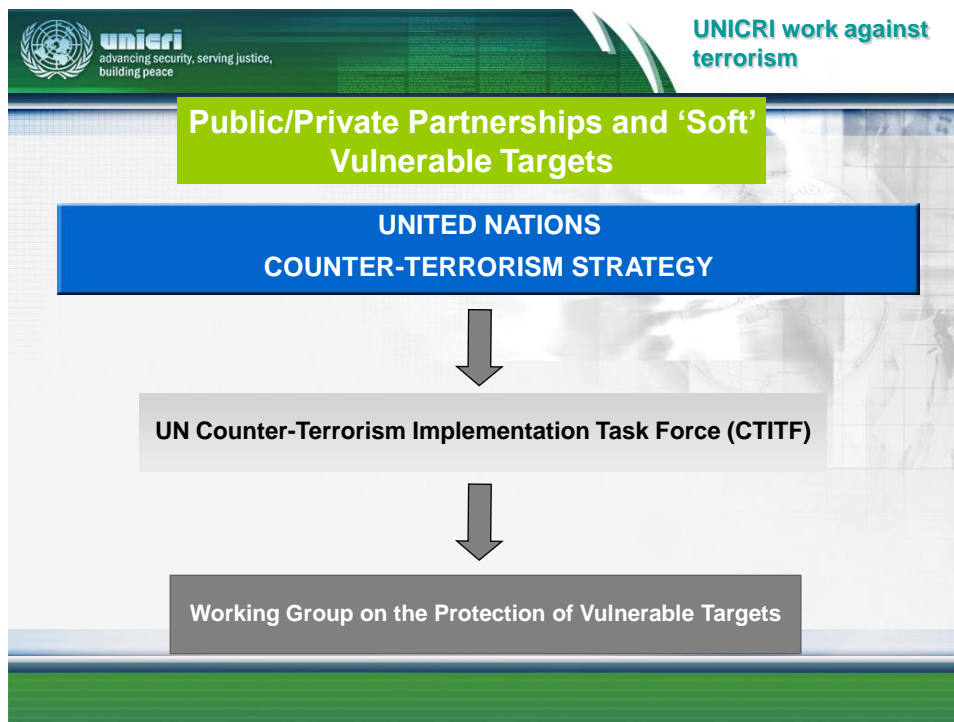
- **Entering the legitimate commodities' supply chain (the example of counterfeit medicines)**
- **Forcing legitimate shopkeepers to sell counterfeit goods, an alternative to protection money**
- **Organized crime in control of a specific business (the counterfeit leather jackets investigation)**

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UNICRI Analysis on Counterfeiting

Counterfeiting - risks for consumers

- 2007 - A Canadian woman died from metal poisoning after the ingestion of a counterfeit pill bought on the internet
- 2006 – More than 100 people died in Panama because of a counterfeit cough syrup
- 2005 – Counterfeit Raki killed more than 20 people in Turkey
- 2001 – Counterfeit Vodka killed at least 60 people in Estonia



APPENDIX E

United Kingdom case judgement details regarding the reverse burden of proof in confiscation

R v KARL ROBERT BENJAFIELD (2002)

[2002] UKHL 2

HL (Lord Slynn of Hadley, Lord Browne-Wilkinson, Lord Steyn, Lord Hope, Lord Hutton) 24/1/2002

CRIMINAL LAW - CRIMINAL PROCEDURE - HUMAN RIGHTS

CONFISCATION ORDERS : DRUG TRAFFICKERS : PROPORTIONATE RESPONSES : INTERFERENCE : PROTECTION OF PUBLIC : REAL RISK OF INJUSTICE : CRIMINAL OFFENCES : REVERSAL OF BURDEN OF PROOF : COMPATIBILITY : RETROSPECTIVITY : PROPORTIONALITY : S.4 DRUG TRAFFICKING ACT 1994 : CRIMINAL JUSTICE ACT 1988 : HUMAN RIGHTS ACT 1998 : EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS 1950 : EUROPEAN CONVENTION ON HUMAN RIGHTS : ECHR : ART.6 : RIGHT TO A FAIR TRIAL : ART.6(2) : PRESUMPTION OF INNOCENCE : PROTOCOL 1 ART.1 : PEACEFUL ENJOYMENT OF POSSESSIONS

Confiscation proceedings under s.4(3) Drug Trafficking Act 1994 were not incompatible with an offender's rights under the European Convention on Human Rights. A judge had to avoid any real risk of injustice when considering an application for a confiscation order.

Appeal against a decision of the Court of Appeal on 21 December 2000 (see R v Benjafield & Ors (2001) 3 WLR 75) dismissing the appellant's appeal against a confiscation order in the sum of £327,971 imposed under s.4(3) Drug Trafficking Act 1994 after the appellant pleaded guilty to two counts of conspiring with others to supply class A and B drugs. The Court of Appeal considered the compatibility of the powers to make confiscation orders contained in the 1994 Act and the Criminal Justice Act 1988 with the Human Rights Act 1998. The Court of Appeal found that neither Act contravened Art.6 European Convention on Human Rights. The following issues arose for this court's consideration: (i) whether a defendant who was the subject of criminal proceedings before the 1998 Act came into force could rely on an alleged breach of Convention rights on appeal; (ii) whether a person against whom a confiscation order was sought was charged with a criminal offence within the meaning of Art.6(2) of the Convention; (iii) if so, whether the reverse burden assumptions in s.4 of the 1994 Act were compatible with Art.6 and/or Protocol 1 Art.1 of the

Convention; and (iv) whether it had been appropriate and just to make a confiscation order in the circumstances of this case. For the House of Lords judgment on the 1988 Act, see *R v Rezvi* (2002) UKHL 1.

HELD: (1) The appellant had pleaded guilty, had been sentenced and had had the confiscation order imposed on him before the 1998 Act came into force. Following *R v Kansal* (2001) UKHL 62, it was clear that the appellant's Convention rights were not engaged. However, this court would consider the position on the assumption that the Convention did apply. (2) Relying on *McIntosh v Lord Advocate* (2001) 3 WLR 107, confiscation proceedings did not constitute a criminal charge under Art.6(2) of the Convention. Article 6(2) did not apply to confiscation proceedings but the appellant had the full protection of Art.6(1) of the Convention. (3) The 1994 Act pursued an important objective in the public interest and the legislative measures were rationally connected with the furtherance of that objective. The procedure enacted by Parliament was a fair and proportionate response to the need to protect the public interest. The critical point was that the judge had to be astute to avoid injustice. If there was or might be a serious or real risk of injustice, a confiscation order should not be made. Further, any interference with Protocol 1 Art.1 was justified for the reasons given in *Rezvi* (supra). (4) The appellant had not given evidence at the confiscation hearing. While the judge had misdirected himself by finding that it had "not been shown on the balance of probabilities that there was any risk of injustice", the Court of Appeal had carefully reviewed the case and this court was satisfied that no injustice or prejudice resulted from the misdirection. When considering an application for a confiscation order, a judge had to avoid any real risk of injustice.

Appeal dismissed.

Charles Miskin QC and Danny Friedman instructed by Stewarts for the appellant. David Perry and Kennedy Talbot instructed by the Crown Prosecution Service for the Crown.

LTL 24/1/2002 : (2003) 1 AC 1099 : (2002) 2 WLR 235 : (2002) 1 All ER 815 : (2002) 2 Cr App R 3 : (2002) 2 Cr App R (S) 71 : (2002) HRLR 20 : (2002) Crim LR 337 : Times, January 28, 2002

R V JOHN THOMAS BARNHAM (2005)

[2005] EWCA Crim 1049

CA (Crim Div) (Gage LJ, Morison J, Judge Zucker) 28/4/2005

CRIMINAL PROCEDURE - CRIMINAL EVIDENCE - HUMAN RIGHTS

BURDEN OF PROOF : CONFISCATION ORDERS : DRUG TRAFFICKING : PROCEEDS OF CRIME : REALISABLE PROPERTY : RIGHT TO FAIR AND PUBLIC HEARING : VALUATION : HIDDEN ASSETS : VALUE OF ASSUMED BENEFIT OBTAINED FROM DRUG TRAFFICKING OPERATIONS : BURDEN OF PROOF TO CIVIL STANDARD ON DEFENDANT TO ESTABLISH HIS REALISABLE ASSETS AT SECOND STAGE OF CONFISCATION PROCEEDINGS : TWO STAGE CONFISCATION PROCEEDINGS : SERIOUS RISK OF INJUSTICE : ASSUMED BENEFIT : STATUTORY ASSUMPTIONS : FAILED CONSPIRACIES : CONSPIRATORS : PERSUASIVE BURDEN : RISK OF INJUSTICE : DOUBLE-COUNTING : Art.6 EUROPEAN CONVENTION ON HUMAN RIGHTS 1950 : DRUG TRAFFICKING ACT 1994

At the second stage of confiscation proceedings under the Drug Trafficking Act 1994, when the court had to determine the amount to be recovered under a confiscation order, the prosecution did not have to show a prima facie case that the defendant had hidden assets.

The appellant (B) appealed against a confiscation order made by a judge in the sum of £1,525,615 following B's conviction on two counts of conspiracy fraudulently to evade the prohibition on the importation of a controlled drug. The confiscation proceedings were conducted in two stages. At the first hearing, the judge determined the total assumed benefit which B obtained from his drug trafficking operations. At the second hearing in respect of realisable assets, the judge found that B had not been a truthful witness and ruled that the amount which he should be ordered to pay under the confiscation order was the amount which had been assessed as the benefit that B had obtained. B submitted that (1) the European Convention on Human Rights 1950 Art.6 (1) was engaged at the second stage of the confiscation proceedings as well as the first and that, in a case involving an allegation by the Crown that a defendant had hidden assets, the Crown had to make out a prima facie case before a defendant could be expected to deal with such an allegation; (2) the judge's decision in respect of the assessment of benefit obtained from the drug trafficking was unfair since it relied on the assumed cost of obtaining drugs even though the conspiracies had failed in the sense that no drugs reached the UK, and failed to make any deduction for costs attributable to other persons involved in the conspiracies and included an element of double-counting.

HELD: (1) At the second stage of confiscation proceedings there was a persuasive burden on a defendant to prove to the civil standard what realisable assets he had, R v Barwick (Robert Ernest) (2001) 1 Cr App R 445 applied; R v Benjafield (2002)

UKHL 2 , (2003) 1 AC 1099 considered. The correct approach for the court to take when dealing with confiscation proceedings at the second stage was the same whether the benefit had been proved by evidence in addition to the statutory assumptions. Once the Crown had established the benefit obtained there was no requirement on it to provide a prima facie case that the defendant had hidden assets. By the second stage a defendant would know exactly how the court had determined the benefit attributable to him and the burden of proof to the civil standard shifted to the defendant to establish, if he could, his realisable assets to the satisfaction of the court. If the defendant proved that he had no, or appreciably less, realisable assets than the amount of the benefit determined by the court, the order would be made in the lesser sum. To hold that the Crown must, in some way, show a prima facie case that the defendant had hidden assets would defeat the object of the confiscation provisions of the Drug Trafficking Act 1994 , which was designed to enable the court to confiscate a criminal's ill-gotten gains. (2) Having heard all the evidence and rejected the evidence of B and his wife, the judge was entitled to find that B had not discharged the burden of proving that he had no realisable assets other than his house. The drugs which never arrived in England were not to be ignored as potential realisable assets. The judge had considered whether to make an allowance for contributions or expenses incurred by other conspirators and concluded that B had sufficient control over the criminal enterprise to pay for and realise the proceeds of the importations himself. The judge had correctly identified the need to ensure that the result of the reverse burden had not, in the instant case, caused any risk of injustice and concluded that no such injustice had been caused. The judge had been entitled to make a confiscation order in the same sum as his determination under the first stage of the proceedings and his order would be confirmed, subject to a reduction of £65,000 which the Crown was prepared to accept that the judge appeared to have double-counted.

Appeal allowed in part.

Counsel:

For the appellant: Tim Owen QC, Gary Summers

For the Crown: Andrew Stubbs, Linda Saunt

LTL 29/4/2005 : (2006) 1 Cr App R (S) 16 : (2005) Crim LR 657

<http://www.publications.parliament.uk/pa/ld200809/ldjudgmt/jd090429/briggs-1.htm>

R v BRIGGS-PRICE (2009)

[2009] UKHL 19

HL (Lord Phillips of Worth Matravers, Lord Rodger of Earlsferry, Lord Brown of Eaton-under-Heywood, Lord Mance, Lord Neuberger of Abbotsbury) 29/4/2009

CRIMINAL PROCEDURE - HUMAN RIGHTS

BENEFIT FROM CRIMINAL CONDUCT : CONFISCATION ORDERS : DRUG TRAFFICKING : PRESUMPTION OF INNOCENCE : RIGHT TO FAIR TRIAL : STANDARD OF PROOF : CONSIDERATION OF BENEFIT FROM OFFENCE NOT CHARGED : STANDARD OF PROOF TO BE APPLIED : s.4(3) DRUG TRAFFICKING ACT 1994 : art.6(2) EUROPEAN CONVENTION ON HUMAN RIGHTS : s.4(2) DRUG TRAFFICKING ACT 1994 : art.6(1) EUROPEAN CONVENTION ON HUMAN RIGHTS

Although the European Convention on Human Rights 1950 art.6(2) did not apply to confiscation proceedings, the presumption of innocence did. Where the judge was considering whether a convicted person had benefited from a specific drug trafficking offence with which he had not been charged, the criminal standard of proof should be applied.

The appellant (B) appealed against a decision ((2008) EWCA Crim 146) upholding a confiscation order imposed following his conviction for conspiracy to import heroin. The Crown's case was that B had been brought into the conspiracy because he had an existing network for the transportation and distribution of cannabis which could be used for the distribution of heroin, though B was not charged in relation to the distribution of cannabis. It was made clear to the jury that determination of B's guilt in respect of the heroin did not require resolution of the issue regarding cannabis. The confiscation proceedings were conducted on the agreed basis that the assumptions contained in the Drug Trafficking Act 1994 s.4(3) were not to be made. The judge held that the determination of benefit derived by B was not limited to the heroin in respect of which he was convicted, and that there was considerable evidence that B was involved in other offences, including cannabis trafficking. The Court of Appeal held that the judge's approach did not breach B's rights under the European Convention on Human Rights 1950 art.6(2). B submitted that (1) where the court was considering an alleged benefit not deriving from a conviction, the structure of the 1994 Act meant that it could proceed only on the basis of the assumptions in s.4(3) of the Act; (2) the procedure adopted by the judge had breached his rights under art.6(2).

HELD: (Lord Brown dissenting on the applicability of art.6(2) of the Convention and Lords Phillips and Mance dissenting on the standard of proof issue) (1) Section 4 of the 1994 Act was a tool to be used presumptively but was neither mandatory nor exclusive in assessing whether, and to what extent, a defendant had benefited from drug trafficking. However, it should only be in exceptional cases that the assumptions under s.4(3) were not pressed by the Crown, at least where it was apparent that a

defendant had assets. The purpose of s.4(2) and s.4(3) was to require the court to make certain assumptions against a defendant when considering his receipt or retention of proceeds from drug trafficking, and it would be absurd if a defendant could object to a confiscation order on the ground that those assumptions were not made. (2) For the purposes of art.6(2) of the Convention, a person against whom an application for a confiscation order was made was not accused of any offence other than the trigger offence of which he had been convicted, *HM Advocate v McIntosh (Robert) (No1)* (2001) UKPC D 1, (2003) 1 AC 1078, *Phillips v United Kingdom* (41087/98) 11 BHRC 280 ECHR and *Van Offeren v Netherlands* (19581/04) Unreported July 5, 2005 applied. Article 6(2) was not therefore engaged when the court was determining, as part of the sentencing procedure for the trigger offence, whether B had benefited from drug trafficking, other than the drug trafficking comprising the trigger offence. That said, it was important to note that, even though art.6(2) did not apply to confiscation proceedings, the presumption of innocence did. That was because it was implied into art.6(1), which did, of course, apply to such proceedings. In this case, there was no question of the judge proceeding on a presumption that B had been involved in the cannabis network. Indeed, the judge plainly thought that B's involvement had been proved to the criminal standard, beyond a reasonable doubt. On any view, therefore, the presumption of innocence in art.6(1) was fully respected in the confiscation proceedings, *Geerings v Netherlands* (30810/03) (2008) 46 EHRR 49 ECHR considered. (3) Where the judge was considering whether a convicted person had benefited from a specific drug trafficking offence with which he had not been charged, art.6 required that the criminal, rather than the civil, standard of proof should be applied. If a presumption of innocence was implied into art.6(1), then it, too, had to require that the person be proved guilty according to law. In the context of a criminal trial, the standard of proof, according to domestic law, was beyond reasonable doubt. Indeed, if that were not the position, the Crown could ask the court to make a confiscation order on the basis of an alleged benefit from a specific offence of which the defendant would have been acquitted if he had been prosecuted for it. (4) (Per Lord Brown) On close analysis, *Geerings* showed that art.6(2) did apply in circumstances such as the instant. However, the requirements of art.6(2) were satisfied in this case. (5) (Per Lord Mance) The standard of proof of every aspect of benefit by drug trafficking was the civil standard, whether such benefit was established by direct or indirect evidence.

Appeal dismissed

Counsel: For the appellant: Tim Owen QC, Timothy Kendal

For the Crown: Mark Lucraft QC, Thomas Payne, Mark Sutherland Williams

Solicitors: For the appellant: Henry Milner & Company

For the Crown: In-house solicitor

LTL 29/4/2009 : Times, April 30, 2009

APPENDIX F

Speech by Mr Antonia Maria Costa, Director General, United Nations Office of Drugs and Crime:

The global crime threat - we must stop it

18th Session of the Commission on Crime Prevention and Criminal Justice

Vienna, 16 April 2009

Mr. Chairman, Excellencies, Ladies and Gentlemen,

It is commonplace to talk about our time in terms of fault lines, turning points and defining moments. In fact, I believe this Commission is meeting at a critical juncture - whether we speak about the financial crisis, the resulting economic catastrophe, climate change, energy and food shortages, terrorism and crime. In my opening remarks I will obviously focus on this latter point, crime, though I believe there are threads connecting it to the turmoil in so many other areas.

Criminals have posed a threat to people, property and activity since time immemorial. For centuries the concern was more about conventional crime, namely offences against individuals and assets, in the awful forms of murder, fraud and theft. These uncivil behaviours persist.

Yet, in the past quarter century, the nature of crime has changed. It has become organized and transnational; it has reached macro-economic dimensions; it has turned into a global business operating in collusion with legitimate activity. It has become more than localized violence - it has turned into a widespread threat to the security of cities, states, even entire regions.

The response has been robust, but not effective. Security forces, armed with war-grade weapons, are patrolling cities and fighting gangs. Armies are being mobilized to fight drug traffickers. Navies are chasing pirates and smugglers. Jet fighters and satellites are being deployed to stop drug trafficking. The UN Security Council has dealt with the issue of national security threatened by organized crime in a number of countries. Around the world organized crime has changed strategic doctrines and threat assessments. It is causing alarm among citizens, politicians and media alike.

Why has organized crime reached such magnitude, the world over? Is it the result of post-communist transition, and a realignment of the world order? Is it due to globalization, the opening up of borders, the ease of travel and communication, the growing economic integration? Or is it because development has not taken root in so many regions, where mass poverty and large-scale unemployment have deepened vulnerability to crime? Perhaps it is because of all of the above, with different root causes in different countries. For sure, in the firmament of our society the stars are now lined up in an adverse constellation that causes anxiety, even fear.

Warning signs everywhere

This meeting takes place at the right time. I seek your guidance because, globally, I believe we face a crime threat unprecedented in breadth and depth. The warning signs are everywhere:

- drug cartels are spreading violence in Central America, Mexico and the Caribbean. The whole of West Africa is under attack from narco-traffickers, that are buying economic assets as well as political power;
- collusion between insurgents and criminal groups threatens the stability of West Asia, the Andes and parts of Africa, fuelling the trade in smuggled weapons, the plunder of natural resources and piracy;
- kidnapping is rife from the Sahel to the Andes, while modern slavery (human trafficking) has spread throughout the world;
- in so many urban centres, in rich as much as in poor countries, authorities have lost control of the inner cities, to organized gangs and thugs;
- the web has been turned into a weapon of mass destruction, enabling cyber-crime, while terrorism - including cyber-terrorism - threatens vital infrastructure and state security.

Is this crime wave going to last? I fear it will. The economic crisis will no doubt worsen this situation. (i) Institutional weakness in fragile states is being exploited by criminal groups that count on corruption and impunity. (ii) Worldwide, tight household budgets are calling for increased demand (and therefore supply) for cheap goods, including those pirated and counterfeited, or those produced by forced labour. (iii) The return of migrants and the reduction of foreign remittances are encouraging the smuggling of, and even trafficking in persons. (iv) A growing number of hungry, angry and unemployed youth are now susceptible to joining gangs, crime syndicates, or terrorist groups. (v) The financial sector, facing widespread illiquidity and insolvency, is being penetrated by cash-rich organized crime groups: money-laundering has never been easier, more widely practiced, and on such a grand scale.

An incomplete crime control regime

Are we equipped to face the global crime threat? I'm not sure.

First, we need to establish whether there is a viable anti-crime architecture, a conceptual framework, in place. For example, the drug control regime has been in existence for over half a century. It is based on three UN Drug Conventions (1961, 1971 and 1988) that have established obligations by Member States, and the mechanism for monitoring compliance. This well-structured system comprises a legislative body (CND), a judicial mechanism (INCB), and an executive arm (UNODC). Drug control has been supported by an unmatched statistical basis that allows Member States to determine changes in drug demand and supply, the impact of policy, and the priority areas of intervention.

As of late, things have however changed. Drug control is coming under pressure, not because of the threat drugs pose to health, but because of our failure to deal with a criminal black market that has profited from the drugs trade. This is a failure of crime control, not drug control. In other words: lack of a crime control architecture threatens to cause the collapse of a robust drug control regime. The pro-drug lobby never had it so easy when it proposes drug legalization: an aberration that is now trying to find legitimacy.

Of course, Member States have agreed upon the UN Conventions against Crime and against Corruption, as well as the 3 TOC protocols. Several instruments related to terrorism have also entered into force. But implementation has been patchy. There is almost no information on world crime. Efforts to fight organized crime have been disjointed. The rules of behaviour are not in place, and the mechanisms for monitoring compliance are incomplete.

As a result, the potential of these legal instruments has not been reached, while crime has gone global. I dare say that these are self-inflicted wounds. The world over, countries face a crime situation largely of their own making. Failure to act has also caused collateral damage to countries caught in the cross-fire. It also belittles the sacrifice of law enforcement officers, and the humanitarian contributions by civil society.

A global response to organized crime

Can we view this crisis as an unparalleled opportunity -- an urgent necessity to change the way we fight organized crime? We must, and we must do so together, in the same way we have united to face terrorism, AIDS, climate change, or the financial crisis.

Since organized crime is a cross-cutting issue, a system-wide response by the UN is essential. UN agencies dealing with development, improving habitats, assisting migrants or protecting children can be as effective in preventing crime as law enforcement is in fighting it. Crime control must also be integrated into peace-building and peace-keeping operations, and this is happening.

The blueprints for a global response to organized crime already exist, but they are not being used. So far, one third of all UN Member States - including some members of the G8 - are not yet parties to the Palermo and Merida Convention. Let's achieve universal accession before the Crime Congress next year. And let's close the gaps between ratification and implementation by making national laws and structures consistent with international commitments - and start to use them to prosecute and convict.

This is just the beginning. There have been half a dozen Conferences of the State Parties, but there is still no mechanism for Parties to review implementation of the UNTOC. The only pilot initiative is for the UNCAC. Too much time has been wasted on process rather than on substance. I advise you to turn the Conferences of Parties for the crime conventions into serious endeavours, and develop review mechanisms, data collection and periodic reporting. Within 18 months Member States will have the opportunity (first in Doha, then in Vienna) to put into place all that is needed to fight organized crime and corruption. Go for it.

But there is more. Two out of three of the UNTOC protocols are inactive. The Firearms Protocol has few state parties, none among the major arms producers: a hand-gun is cheaper than a cellular phone. The Smuggling of Migrants Protocol is also neglected, despite the daily tragedy of tens of thousands of desperate people who pay a small fortune to cross perilous seas, deserts and mountains - and very often end up paying with their lives. Let's bring these two Protocols to life. And let's use the General Assembly Discussion on Human Trafficking next month to intensify the global response to modern slavery.

I welcome the thematic discussion on economic fraud and identity-related crime. Money laundering is rampant: honest citizens - worried about losing their pensions, homes and jobs - wonder why the assets of untouchable mafias are not seized. If we now implement tough anti-corruption measures, a decade from now people will say that the financial crisis had a silver lining: it put an end to bank secrecy, tax havens and regulation and compliance failure.

Also, more must be done to prevent the internet from being used as a tool for supplying drugs, arms, people and human organs, and as a weapon of cyber-terrorism.

Evil minds are quick to adapt to technological change. We are not. Why are member states so opposed to doing something against a crime that is virtually penetrating every home?

In my view, efforts to fight organized crime must become more operational. While drug controlled deliveries are common practice, governments have found it more difficult to work together against mafia cartels - and even more difficult to investigate and prosecute jointly terrorists. I urge you to engage in mutual legal assistance on the basis of all UN anti-crime instruments, to extradite, prosecute and convict criminals. UNODC has expertise, including software, that can help.

Ladies and Gentlemen,

We face a crime wave that has become a security crisis. It must be stopped before it spreads even more fear, corruption, violence and poverty.

The political will of states is mightier than the greed and fire power of criminal groups. Working together does not mean surrendering sovereignty, it means defending it. So let us enforce the rule of law where uncivil society prevails.

Thank you for your attention.

